



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

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Sheila Lee
Interim Inspector General

December 21, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 22-BOR-2506

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Administrative Hearing Decision
Form IG-BR-29

cc: Bureau for Medical Services
PC&A

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

█, A PROTECTED PERSON,

Appellant,

v.

Action Number: 22-BOR-2506

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for █, A PROTECTED INDIVIDUAL. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on December 15, 2022, on an appeal filed September 30, 2022.

The matter before the Hearing Officer arises from the September 19, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her parents, █. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 513, §§513.6, *et. seq.*
- D-2 Denial Notice, dated September 19, 2022
- D-3 Independent Psychological Evaluation (IPE), West Virginia I/DD Waiver, dated August 1 and August 3, 2022
- D-4 Individualized Education Program, █ Schools, dated May 5, 2022
- D-5 Denial Notice, dated September 7, 2021
- D-6 Independent Psychological Evaluation IPE I/DD, West Virginia I/DD Waiver, dated August 25, 2021

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a 4-year-old diagnosed with Prader-Willi Syndrome, a genetic disorder. (Exhibits D-3 and D-6).
- 2) The Appellant underwent an Independent Psychological Evaluation (IPE) on August 1 and 3, 2022 as part of the application process under the I/DD Waiver Program. (Exhibit D-3)
- 3) On September 19, 2022, the Respondent sent notification to the Appellant that the documentation submitted for review did not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe. (Exhibit D-2)
- 4) The Appellant was administered the Weschler Pre-School and Primary Scale of Intelligence-4th Edition (WPPSI-IV) for cognitive/intellectual ability testing which found her have a Full Scale I.Q. score of 78 which suggests a level of cognitive/intellectual functioning in the borderline range. (Exhibit D-3)
- 5) The Peabody Picture Vocabulary Test-5th Edition (PPVT-5) was also administered which the Appellant scored a 95 which suggests a level of functioning in the average range.
- 6) The Appellant has diagnoses of Language disorder, expressive and developmental coordination disorder. (Exhibits D-3 and D-6)

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, states: To be medically eligible, the applicant must require a level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID

The MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has intellectual disability with concurrent substantial deficits

manifested prior to age 22 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive IDDW Program services, an applicant must meet the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for active treatment; and
- Requirement of ICF/IID Level of Care.

Bureau for Medical Services Provider Manual §513.6.2.1, *Diagnosis*:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age 22 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which, if severe and chronic in nature, may make an individual eligible for the IDDW Program include but are not limited to, the following:

- Autism;
- Traumatic brain injury;
- Cerebral Palsy;
- Spina Bifida; and
- Any condition, other than mental illness, found to be closely related to intellectual disabilities because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disabilities.

Additionally, the applicant who has a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must meet the following requirements:

- Likely to continue indefinitely; and,
- Must have the presence of at least three substantial deficits out of the six identified major life areas listed in Section 513.6.2.2, Functionality.

Bureau for Medical Services Provider Manual §513.6.2.2, *Functionality*

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a

minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75th percentile when derived from Intellectual Disability (ID) normative populations when ID has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

DISCUSSION

On September 19, 2022, the Appellant's I/DD Waiver Program application was denied by the Respondent. The denial notice stated that the basis for the denial was that the "Documentation submitted for review does not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe."

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) *Diagnosis* of Intellectual Disability or related condition which constitutes a severe and chronic disability that manifested prior to age 22; 2) *Functionality* of at least 3 substantial adaptive deficits out of the 6 major life areas that manifested prior to age 22, 3) *Active Treatment* - the need for active treatment, 4) *ICF/IID Level of Care* need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services.

The Respondent denied the Appellant's application as he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Respondent's representative, Kerri Linton, testified that the Appellant's genetic condition does not meet the medical eligibility or related condition criteria. Additionally, Ms. Linton stated that because the diagnostic criteria was not established, she did not evaluate the Appellant's functionality testing.

On the Appellant's August 2022 IPE, a WPPSI-IV test was administered which showed an overall Full Scale IQ of 78, suggesting a borderline range of cognitive/intellectual functioning. Ms. Linton testified that scores of under 70 indicate intellectual disability. The Appellant scored below 70 only in the visual comprehension section of the test with a score of 69 but attributed this score more due to the Appellant's limited speech language. The IPE examiner noted that Appellant's "limited speech language lowered verbal comprehension scores. Nonverbal measures of intelligence (visual spatial and fluid reasoning) may be better estimates of intellectual potential." The Appellant scored a 109 in visual spatial and a 91 in fluid reasoning.

The PPVT-5 was also administered which showed an average range of cognitive/intellectual functioning with a standard score of 95. These scores also align with a previous IPE testing done in August 2021 wherein the Slosson Intelligence Test showed that the Appellant was functioning at a low average range of intellectual/cognitive functioning with an estimated IQ of 82.

The Appellant's mother, [REDACTED], testified that the WPPSI-IV was not administered properly by the examiner who did not fully assess the areas of visual spatial and fluid reasoning. However, Ms. Linton reiterated that the Full Scale IQ score which is the overall assessment of an individual's cognitive/intellectual ability is relied upon. [REDACTED] also questioned why the I/DD Waiver Program does not see Prader-Willi Syndrome as a stand alone diagnosis for medical eligibility such as other DHHR programs. The I/DD Waiver program has its own set of criteria established by state and federal government policy. Ms. Linton explained that the I/DD Waiver Program does not consider Prader-Willi Syndrome as a stand-alone related condition. The intellectual disability must be at a level that would require ICF/IID level of care. The documentation submitted for review did not indicate that the Appellant met the diagnosis criteria for medical eligibility. The Respondent's decision to deny I/DD Waiver Program services is affirmed.

CONCLUSION OF LAW

Whereas the Appellant does not meet the medical eligibility criteria for the I/DD Waiver Program set forth by policy, the Respondent must deny her application.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's I/DD Waiver Program application.

ENTERED this 21th day of December 2022.

Lori Woodward, Certified State Hearing Officer