



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

March 25, 2022

[REDACTED]

Re: [REDACTED], A PROTECTED INDIVIDUAL v WV DHHR
ACTION NO.: 22-BOR-1048

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Kerri Linton, Psychological Consultation & Assessment
Sarah Clendenin, Psychological Consultation & Assessment
Stacy Broce, Bureau for Medical Services

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 22-BOR-1048

**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 February 24, 2022.

The matter before the Hearing Officer arises from the December 20, 2021 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by his mother, █. Appearing as a witness for the Appellant was his father, █. All witnesses were sworn and the following documents were admitted into evidence.

** Observing for the Respondent was Jordan Mitchell, Psychological Consultation & Assessment (PC&A).

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-2 BMS Notice of Denial, dated December 20, 2021
- D-3 Independent Psychological Evaluation (IPE), dated November 29, 2021
- D-4 IPE, dated September 17, 2021
- D-5 BMS Notice of Denial, dated October 22, 2021
- D-6 Physician Letter signed by █, dated June 11, 2021
- D-7 █ Discharge Summary, dated October 01, 2018
- D-8 West Virginia Birth to Three (BTT) Evaluation/Assessment Summary Report by █, dated October 15, 2019

- D-9 West Virginia Birth to Three Evaluation/Assessment Summary Report by [REDACTED], dated November 05, 2018
- D-10 West Virginia Birth to Three Evaluation/Assessment Summary Report by [REDACTED] dated November 06, 2018, and West Virginia Birth to Three Evaluation/Assessment Summary Report by [REDACTED] dated October 13, 2019
- D-11 West Virginia Birth to Three Nutrition Assessment Summary Report by [REDACTED] dated October 10, 2019
- D-12 West Virginia Birth to Three Evaluation/Assessment Summary Report by [REDACTED] dated September 03, 2020
- D-13 BMS Notice of Denial - Amended, dated January 24, 2022
- D-14 [REDACTED] Order of Adoption, dated November 10, 2020
- D-15 [REDACTED] Discharge Report, dated January 28, 2021
- D-16 [REDACTED] Medical Center Visit Summary, dated November 23, 2021
- D-17 [REDACTED] Children's Pediatric Neurology Clinic Order Requisitions, dated November 23, 2021
- D-18 [REDACTED] Neurology Office/Clinic Notes, dated May 31, 2019 through November 17, 2022

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) An application was made on behalf of the Appellant for services under the IDWW Program.
- 2) The Respondent, through the Bureau for Medical Services (BMS), contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDWW Program, including eligibility determinations.
- 3) On September 17, 2021, [REDACTED] a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-4)
- 4) The September 17, 2021, IPE lists diagnoses of Global Developmental Delay, Macrocephaly, and Cerebral Palsy. (Exhibit D-4)
- 5) On October 22, 2021, the Respondent issued a notice advising the Appellant that he was ineligible for IDWW Program benefits because documentation provided for review did not indicate the presence of an eligible diagnosis of either Intellectual Disability or a related condition which is severe. (Exhibit D-5)
- 6) The Respondent's determination was based on the review of "September 17, 2021 IPE, Undated and Unsigned letter from [REDACTED] Neurology, October 01, 2018 [REDACTED]"

Discharge Summary, September 18, 2019 [REDACTED] Report, October 15, 2019 WV BTT Evaluation/Assessment Summary Report, other outdated BTT assessments” (Exhibit D-5)

- 7) On November 29, 2021, [REDACTED] MA, completed an additional IPE on the Appellant. (Exhibit D-3)
- 8) The November 29, 2021, evaluation diagnosed the Appellant with Global Developmental Delay. (Exhibit D-3)
- 9) On December 20, 2021, the Respondent issued a notice advising the Appellant that he was ineligible for IDDW Program benefits because documentation provided for review did not indicate the presence of an eligible diagnosis of either Intellectual Disability or a related condition which is severe. (Exhibit D-2)
- 10) The Respondent’s determination was based on the review of “November 29, 2021 Second Medical IPE; September 17, 2021 IPE, October 22, 2021 Notice of Denial, Undated and Unsigned letter from [REDACTED] Neurology, October 01, 2018 [REDACTED] Discharge Summary, September 18, 2019 [REDACTED] Report, October 15, 2019 WV BTT Evaluation/Assessment Summary Report, other outdated BTT assessments” (Exhibit D-2)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 513.6 provides, in part:

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement, and any other documentation deemed appropriate.

BMS Manual § 513.6.2 provides, in part:

To be medically eligible, the applicant must require the 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 IPE verifies that the applicant has an intellectual disability with concurrent

substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

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

BMS Manual § 513.6.2.1 provides, in part:

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 may, if severe and chronic in nature, 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 under Section 513.6.2.2, Functionality.

BMS Manual § 513.6.2.2 provides, in part:

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 ID normative populations when intellectual disability 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

Pursuant to policy, in order for an applicant to be found eligible for the Medicaid IDDW Program, an individual must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). To be medically eligible, criteria in each of the following categories must be met in order to be eligible for the IDDW Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. Failure to meet any one of the eligibility categories results in a denial of program services. To establish that the Respondent correctly denied the Appellant eligibility, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis for IDDW Program eligibility purposes.

On October 22, 2021, the Appellant's application for the IDDW Program was denied based on failure to meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, that manifested prior to age 22. Kerri Linton, consulting psychologist for the Respondent testified that an Independent Psychological Evaluation (IPE) was completed on September 17, 2021, when the Appellant was 3 years of age, by a licensed Independent Psychologist (IP), [REDACTED] with Psychological Assessment and Intervention Services, Inc. The September 2021 IPE diagnosed the Appellant with Global Developmental Delay, Macrocephaly, and Cerebral Palsy. Ms. Linton testified that because Global Developmental Delay is not considered to be consistent with a diagnosis of an Intellectual Disability, and because it does not fall under the category of either a related condition or an Intellectual Disability, it is not an eligible diagnosis for the IDDW Program. She further testified that while Cerebral Palsy is, if severe, considered a related condition that may qualify an applicant for Waiver eligibility; the September 17, 2021 documentation failed to note the diagnostic severity level of the Appellant's Cerebral Palsy.

In order to obtain the full battery IQ, an attempt was made to administer the Wechsler Preschool and Primary Scale of Intelligence (WPPSI) test during the September 2021 IPE; however, due the Appellant's severe communication problems and lack of cooperation, he was unable to complete

the assessment. Due to the Appellant's lack of participation, an Adaptive Behavior Assessment System III (ABAS III) was administered to his mother. When assessing test scores of the ABAS III, policy defines a substantial deficit as standardized test scores of three (3) standard deviations below the mean, or less than one percentile, when compared to a normative population. The Appellant must score a one (1) or a two (2) to reflect the degree of limitations required by policy to be considered a substantial deficit. The Respondent testified that because the Appellant's ABAS-III score for *self-care* was the only score to fall within the one (1) or two (2) range as required by policy to be considered substantial, the Appellant failed to meet the diagnostic criteria for eligibility. Ms. Linton testified that not only did the Appellant fail to meet the diagnostic criteria for eligibility, but he also failed to demonstrate at least 3 substantial adaptive deficits of the 6 major life areas.

Ms. Linton further testified that an additional IPE was completed by [REDACTED] with Sunshine Solutions on November 29, 2021. A Developmental Assessment of Young Children, Second Edition (DAYC-2) was administered to assess the Appellant's cognitive functioning. The Appellant's DAYC-2 assessed the Appellant with a cognitive standard score of 77, which, according to Ms. Linton is lower than other neurotypical peers, but does not fall to the level of a potential Intellectual Disability, which would be standard scores of 55 and below. Additionally, the Appellant was assessed with the following scores: *Communication - 67, Social Skills - 69, Adaptive Behavior - 60, and Gross Motor - less than 50, or one percentile (1%)*. An ABAS III was also administered during the November 2021 IPE that assessed the Appellant with the following scores: *Communication - 1, Community Use - 1, Home Living - 1, Health and Safety - 1, Leisure - 2, Social - 3, Learning - 2, Self Direction - 1, and Self Care - 1*.

The November 2021 IPE diagnosed the Appellant with Global Developmental Delay, failing to include the September 2021 diagnosis of Cerebral Palsy. Ms. Linton testified that because Global Developmental Delay is not considered to be consistent with a diagnosis of an Intellectual Disability, and because the Appellant's scores vary significantly when compared to the IPE assessed two (2) months prior (September 2021), agreement could not be ascertained across the accompanying documentation. She further stated that making eligibility determinations for younger children can be particularly challenging due to the difficulty in determining where the scores fall and a child's trajectory, as younger children often improve and make substantial gains in their adaptive skills. Because there are considerable differences in the accompanying documentation, a definitive related condition that meets the severity requirement established by policy for IDDW Program eligibility could not be ascertained.

The Appellant's Representative [REDACTED] testified that while he understands the Department's decision is based upon all of the documentation that has been provided, they were particularly dissatisfied with the Appellant's initial assessment, as testing circumstances were "completely unprofessional." [REDACTED] further testified that because of their dissatisfaction with the initial evaluation, a second IPE was sought. [REDACTED] testified that while the second evaluation was "more accurate," he still feels the evaluator may have been "giving him [the Appellant] more credit." Additionally, the Appellant's Representative questioned the Department's need to consider the Appellant's September 2021 assessment, when a secondary (November 2021) assessment was provided. However, Ms. Linton testified that in order to obtain an accurate determination of eligibility, all provided documentation must be taken into consideration. Additionally, it should also be noted that because the narrative and diagnoses present in the September 2021 and November 2021 IPE fail to corroborate, the suggestion of a third-party assessment was provided by the Respondent and may be beneficial in order to better assess the Appellant's IDDW Program eligibility.

To meet medical eligibility for the IDDW Program, the Appellant must have an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits that require an ICF level of care. Because agreement could not be ascertained across the accompanying documentation, possibly due to the considerable differences generated by the young age of the Appellant and the difficulty in determining the trajectory of the Appellant's capability, an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits that require an ICF level of care could not be established.

CONCLUSIONS OF LAW

- 1) To be medically eligible for the Medicaid IDDW Program, the Appellant had to meet medical eligibility criteria for diagnosis, functionality, need for active treatment, and require an ICF/ IID Level of Care.
- 2) To be eligible for the Medicaid IDDW Program, the Appellant must have an Intellectual Disability or a chronic and severe related condition.
- 3) Policy requires the Appellant's diagnosis of Cerebral Palsy to be severe.
- 4) The preponderance of evidence failed to establish that the Appellant has an eligible diagnosis of a chronic and severe related condition.
- 5) Because the evidence failed to establish that the Appellant met the medical eligibility criteria for a qualifying diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the Medicaid IDDW Program is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this *25th* day of March 2022.

Angela D. Signore
State Hearing Officer