



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
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Jolynn Marra  
Inspector General

March 3, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 22-BOR-1139

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: Stacy Broce, BMS  
Kerri Linton, PC&A  
Janice Brown, KEPRO

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-1139**

**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 March 2, 2022, on an appeal from December 7, 2021.

The matter before the Hearing Officer arises from the November 19, 2021, decision by the Respondent to deny the Appellant's medical eligibility under the I/DD Waiver program.

At the hearing, the Respondent appeared by Charlie Bowen, a consulting Psychologist for the Bureau of Medical Services. The Appellant appeared by his parents █ who appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual § 513.6
- D-2 Notice of Denial dated November 16, 2021
- D-3 Independent Psychological Evaluation dated September 29, 2021
- D-4 █ Schools Individualized Education Program dated May 6, 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's parents applied for services under the I/DD Waiver program for their 13-year-old son.
- 2) As part of the application process, an Independent Psychological Evaluation (IPE) was performed with the Appellant and his mother on September 29, 2021. (Exhibit D-3)
- 3) The Appellant was diagnosed with Moderate Intellectual Disability and Down Syndrome. (Exhibit D-3)
- 4) The Appellant was found to have substantial adaptive deficits in learning and language. (Exhibit D-3)
- 5) On November 19, 2021, the Respondent issued a Notice of Denial to the Appellant's parents indicating that the application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for I/DD Waiver eligibility.
- 6) The Appellant did not present a substantial adaptive deficit in Self-Care.
- 7) The Appellant did not present a substantial adaptive deficit in Self-Direction.
- 8) The Appellant did not present a substantial adaptive deficit in Capacity for Independent Living.

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver 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.

## **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 I/DD Waiver 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 Disability 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 disability.

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**

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 75<sup>th</sup> 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.

### **Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## **DISCUSSION**

Policy governs that to be eligible for the I/DD Waiver Program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and require an ICF/IID level of care. Based on the information submitted for an eligibility determination, the Respondent denied the Appellant's application for failure to meet the functionality criteria. To meet eligibility under this criteria, the Appellant must have substantial adaptive deficits in at least three of six major life areas. These areas include self-care, language (communication), learning, mobility, self-direction, and the capacity for independent living. The Respondent had to prove by a preponderance of the evidence that the documentation submitted with the Appellant's application failed to meet the established functionality criteria.

Mr. Charlie Bowen, a consulting Psychologist for the Bureau of Medical Services, testified that the eligibility criteria for the I/DD Waiver program is sequential. The Appellant met the diagnostic criteria with his diagnosis of moderate intellectual disability and down syndrome but failed to meet the functionality eligibility criteria. Mr. Bowen indicated that the presence of substantial deficits must be supported by relevant test scores and narrative descriptions provided in the documentation for review. During the IPE, the Appellant was administered an ABAS-3 to measure adaptive behaviors. Mr. Bowen testified that scaled scores of one and two are considered eligible scores to meet the criteria in each tested area. The Appellant achieved an eligible score in communication and functional academics which resulted in deficits being awarded in language and learning. The Appellant did not present eligible scores in self-care and self-direction. Mr. Bowen testified that to be awarded a deficit in the capacity for independent living an individual must present substantial delays in at least three subdomain categories under that life area. While the Appellant had an eligible score in community use, the Appellant did not present eligible scores in home living, health and safety, leisure, and social; therefore, a deficit could not be awarded in that area.

The Appellant's representatives purported that their child's comprehension in the evaluated life areas change daily. They described incidents of the child's difficulties in the areas of self-care, self-direction, and in the capacity for independent living. They indicated that the child does not

have the ability to shower or bathe independently and requires constant monitoring with self-direction. They described their concerns with their child's safety under the capacity for independent living. They described episodes in which their child caught fire to the kitchen and an accident in which their child was walking a one-year relative down the stairs which resulted in a fall.

Policy identifies substantial deficits are defined as standard scores of three standard deviations below the mean or less than one percentile when derived from a normative population. Deficits must be supported by both relevant test scores and narrative descriptions in documentation submitted for review. Whereas the Appellant failed to demonstrate relevant test scores on the administered tests in the areas of self-care, self-direction, and capacity for independent living an additional adaptive deficit cannot be awarded as defined by policy.

Because the documentation failed to identify one additional substantial deficit in the life areas, the Appellant does not meet the functionality criteria for eligibility under the I/DD Waiver program.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an applicant must meet the diagnostic, functionality, and active treatment criteria and require the need for an ICF/IID Level of Care to meet the medical eligibility for the I/DD Waiver program.
- 2) The Appellant met the diagnostic criteria with a diagnosis of Moderate Intellectual Disability and Down Syndrome.
- 3) To meet the functionality criteria, an applicant must have substantial adaptive deficits in three of six identified life areas.
- 4) The Appellant presented substantial adaptive deficits in learning and expressive and receptive language.
- 5) The Appellant did not meet the functionality criteria of at least three substantial adaptive deficits in the major life areas; therefore, medical eligibility under the program cannot be established.

### **DECISION**

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

**ENTERED this \_\_\_\_ day of March 2022.**

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Eric L. Phillips  
**State Hearing Officer**