



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

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Cabinet Secretary

Board of Review
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Jolynn Marra
Inspector General

May 26, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1443

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Stacy Broce, Bureau for Medical Services
Kerri Linton, Psychological Consultation and Assessment
Janice Brown, KEPRO

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

█, A JUVENILE,

Appellant,

v.

ACTION NO.: 22-BOR-1443

**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 juvenile. This hearing was held in accordance with the provisions of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on May 4, 2022 on an appeal filed with the Board of Review on March 28, 2022.

The matter before the Hearing Officer arises from the Respondent's March 16, 2022 decision to deny the Appellant's medical eligibility for the Medicaid Intellectual/Developmental Disabilities Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, Psychologist, Psychological Consultation and Assessment. The Appellant appeared *pro se* by █, the Appellant's mother. Both witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Chapter 513
- D-2 BMS Notice, dated March 16, 2022
- D-3 Independent Psychological Evaluation (IPE), dated March 14, 2022
- D-4 Adaptive Behavior Assessment System, Third Edition (ABAS-3)
Parent/Primary Caregiver Form
- D-5 Battelle Developmental Inventory (BDI-2) Screening Form
Gilliam Autism Rating Scale, Third Edition (GARS-3)
- D-6 █ Medicine Children's Developmental Assessment, dated December 15, 2021
- D-7 WV Birth to Three Evaluation Summary Report, dated July 29 and July 20, 2020

WV Birth to Three Evaluation/Assessment Summary Report, dated August 11, 2020
WV Birth to Three Evaluation/Assessment Summary Report, dated May 27, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant applied for eligibility for the Medicaid IDD Waiver Program (Exhibit D-2).
- 2) On March 16, 2022, the Respondent issued a notice advising the Appellant's medical eligibility for the Medicaid IDD Waiver Program was denied because the documentation failed to establish an eligible diagnosis (Exhibit D-2).
- 3) The March 14, 2022 IPE ABAS-3 scores indicated substantial adaptive deficits in some of the six major life areas (Exhibits D-3, D-4, and D-6).
- 4) The Appellant has a diagnosis of Autism Spectrum Disorder, Level 2 (Exhibits D-3 and D-6).
- 5) The Appellant has a diagnosis of Global Developmental Delay (Exhibit D-3).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.2 provide in pertinent parts:

To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet medical eligibility. The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychologist Evaluation (IPE); which may include: background information, mental status examination, a measure of intelligence, adaptive behavior, achievement and any other documentation deemed appropriate.

To be medically eligible, the applicant must require the level of care and services provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) as evidenced by required evaluations and other information requested by the Independent Psychologist or the MECA and corroborated by narrative descriptions of functioning and reported history.

The MECA determines the qualification for an ICF/IID level of care based on the

IPE that verifies that the applicant has a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. For the I/DD Waiver Program individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

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

BMS Manual § 513.6.2.1 provides in pertinent part:

If the applicant does not have a diagnosis of intellectual disability, the applicant must have a diagnosis of a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

If severe and chronic in nature, a diagnosis of Autism may make an individual eligible for the Medicaid I/DD Waiver program. Additionally, an applicant who has a diagnosis of 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*.

DISCUSSION

The Respondent denied the Appellant's application for medical eligibility for the Medicaid I/DD Waiver Program due to the Appellant lacking an eligible diagnosis. The Appellant's representative argued that the diagnosis severity level didn't reflect the Appellant's needs and argued the Appellant required services the family cannot provide without assistance from the Medicaid I/DD Waiver Program. The Appellant's representative argued that the Appellant's needs are significant and that she has multiple delays and functioning limitations that should qualify her for the Medicaid I/DD Waiver Program.

The Respondent had to prove by a preponderance of the evidence that the Appellant lacked an eligible diagnosis. The evidence established that the Appellant does not have a diagnosis of Intellectual Disability Disorder. To be eligible for the Medicaid I/DD Waiver Program, the Appellant's Autism Spectrum Disorder had to constitute a severe and chronic disability with concurrent substantial deficits.

The policy requires the Respondent to rely on information contained within the IPE and submitted documentation. The Respondent does not have the authority to change the information submitted

for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the Respondent followed the policy when making a decision about the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's diagnosis and severity and can only decide if the Respondent correctly determined the Appellant's eligibility based on the diagnosis and severity reflected in the submitted documentation.

The evidence reflected that the Appellant does have delays and impairments in some of the six major life areas. However, to be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have an eligible diagnosis. The Respondent is required to rely on the information conveyed in the IPE. The IPE failed to verify that the Appellant's functioning barriers were a result of a diagnosis that constituted a severe and chronic disability.

While the IPE established that the Appellant's Autism Index score indicates Autism Spectrum Disorder, Level 3, the IPE narrative states that the Appellant, "most likely falls into a Level 2 at this time." The IPE diagnosis reflected an Autism Spectrum Disorder, Level 2, with accompanying language impairment, and Global Developmental Delay. The IPE diagnosis of Autism Spectrum Disorder, Level 2 was corroborated by the WVU Medicine Children's Developmental Assessment. The Appellant's diagnosis fell below the severity threshold to establish the Appellant's Autism Spectrum Disorder as an eligible severe and chronic condition. Because the IPE failed to establish an eligible diagnosis, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant's related condition had to constitute a severe and chronic disability with concurrent substantial deficits.
- 2) The preponderance of evidence failed to verify that the Appellant's diagnosis of Autism Spectrum Disorder constituted a severe and chronic disability with concurrent substantial deficits.
- 3) The Respondent correctly denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

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 26th day of May 2022.

Tara B. Thompson, MLS
State Hearing Officer