



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

June 22, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1516

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

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-1516

**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 ██████████. 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 25, 2022 on an appeal filed with the Board of Review on April 13, 2022.

The matter before the Hearing Officer arises from the Respondent's February 18, 2022 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Charlie Bowen, Psychological Consultation and Assessment. The Appellant appeared *pro se* and was represented by his mother, ██████████. Appearing as witnesses on behalf of the Appellant were ██████████, the Appellant's father; ██████████, the Appellant's sister; ██████████, family friend; ██████████; and ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) I/DD Waiver Chapter 513 Excerpts
- D-2 BMS Notice, dated February 18, 2022
- D-3 Independent Psychological Evaluation (IPE), completed February 10, 2022
- D-4 ██████████ Medicine Letter, dated February 8, 2022
- D-5 IPE dated March 14, 2019
- D-6 Adaptive Behavior Assessment System, Third Edition (ABAS-3)

- D-7 BMS Notice, dated April 15, 2019
- D-8 Individualized Education Program (IEP), meeting date March 11, 2019
- D-9 IPE, dated January 9, 2017
- D-10 ABAS-3
- D-11 BMS Notice, dated February 15, 2017
- D-12 IPE, dated August 19, 2016
- D-13 BMS Notice, dated October 15, 2016
- D-14 Neuropsychological Evaluation, dated December 18, 2015

Appellant's Exhibits:

- A-1 Letter, Dated May 24, 2022
- A-2 Letter, dated May 24, 2022
- A-3 Text Correspondence, dated May 25, 2022
- A-4 Letter, dated May 24, 2022
- A-5 Letter, dated May 25, 2022
- A-6 Letter, undated

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 medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.
- 2) On February 18, 2022, the Respondent issued a notice denying the Appellant's medical eligibility because documentation failed to indicate an eligible diagnosis (Exhibit D-2).
- 3) At the time of the Respondent's denial, the Appellant was 22 years old (Exhibits D-3).
- 4) The Appellant does not have a diagnosis of Intellectual/Developmental Disability (Exhibits D-3, D-5, D-8 and D-9).
- 5) The Appellant has a diagnosis of Autism Spectrum Disorder, Level 1 (Exhibits D-3, D-5, and D-9).
- 6) The significant functioning deficits reflected by the ABAS-3 scores were not corroborated by IPE narrative, other standardized test scores, and supporting documentation (Exhibits D-3, D-5, D-8, D-9, D-12, and D-14).

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*.

BMS Manual § 513.6.2.2 provides in pertinent 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.

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.

DISCUSSION

The Bureau for Medical Services (BMS) has the authority to contract with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the Medicaid I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA 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 MECA 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 Medicaid I/DD Waiver eligibility based on the diagnosis and severity reflected in the submitted documentation.

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program and determined that documentation failed to establish an eligible diagnosis. The Appellant contested the denial and argued that the Appellant has severe limitations, has barriers with independent living, and requires substantial prompting and direct support.

To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have a severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of general intellectual functioning or adaptive behavior similar to those individuals with an I/DD diagnosis. The related condition had to manifest before age 22, be likely to continue indefinitely, and result in substantial functioning limitations. To prove the Respondent correctly denied the Appellant's Medicaid I/DD Waiver eligibility, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of a related condition which constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Diagnosis

Autism Spectrum Disorder is a potentially eligible diagnosis when severe and chronic in nature. The evidence verified that the Appellant has a diagnosis of Autism Spectrum Disorder, Level 1.

Severity

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 manifested before age 22. The policy requires the Respondent to rely on information contained within the IPE and submitted documentation when determining severity eligibility. To establish Autism as an eligible diagnosis, the IPE had to indicate the Appellant has a diagnosis of Autism Spectrum Disorder, Level 3.

The Gilliam Autism Rating Scale 3 (GARS 3) administered to the Appellant on March 14, 2019 indicated the Appellant had Autism Spectrum Disorder, Level 3, and the January 9, 2017 narrative reflected the Appellant has severe symptoms of Autism Spectrum Disorder. However, the administering IPE clinicians did not provide a Level 3 severity when diagnosing the Appellant on any of the IPEs.

An Autism Spectrum Disorder, Level 3, diagnosis must be supported by the IPE and constitute a severe and chronic disability with concurrent substantial deficits. Letters submitted by the Appellant and the ABAS-3 scores indicated severe functioning deficits in various areas. While the evidence revealed the Appellant has significant barriers with independent living, the preponderance of evidence failed to establish severe deficits in other functioning areas. The policy requires the standardized test scores to be corroborated by IPE narrative and other supporting documentation.

Because the IPE and submitted documentation failed to verify a diagnosis of Autism Spectrum Disorder, Level 3, that constituted a severe and chronic disability with concurrent substantial deficits in at least three major life areas, the Respondent correctly denied the Appellant's medical 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 manifested before age 22.
- 2) The preponderance of evidence failed to verify that the Appellant's diagnosis of Autism Spectrum Disorder, Level 1, constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.
- 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 22nd day of June 2022.

Tara B. Thompson, MLS
State Hearing Officer