



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

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Jolynn Marra  
Inspector General

May 26, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 22-BOR-1582

Dear [REDACTED]:

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

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
PC&A  
KEPRO

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action No.: 22-BOR-1582**

**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 May 18, 2022, on an appeal filed April 27, 2022.

The matter before the Hearing Officer arises from the Respondent's April 11, 2022 decision to deny the Appellant's application for participation in the I/DD Waiver Program due to unmet medical eligibility.

At the hearing, the Respondent was represented by Linda Workman. The Appellant was represented by his mother, █. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual (excerpt)  
Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)  
§§ 513.6 – 513.6.4
- D-2 Notice of Decision, dated April 11, 2022
- D-3 Independent Psychological Evaluation (IPE)  
Evaluation date: March 10, 2022
- D-4 Individualized Education Program (IEP), █ County Schools  
IEP Meeting Date: September 24, 2021
- D-5 Personalized Education Plan, dated September 23, 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 was an applicant for the I/DD Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Linda Workman, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent denied the Appellant's application for the I/DD Waiver Program in a notice dated April 11, 2022 (Exhibit D-2).
- 5) This notice (Exhibit D-2) provided the basis for denial as "Documentation submitted for review indicates a diagnosis of Intellectual Disability, mild; however, this is not supported in the additional documentation submitted for review nor in the other test data. Autism Spectrum Disorder, Level 1, does not meet policy definition of a severe Related Condition. Finally, adaptive behavior is not consistent with the need for an ICF level of care."
- 6) The notice to the Appellant (Exhibit D-2) indicated the Appellant did not have "substantial adaptive deficits" in any of the "six major life areas identified for Waiver eligibility."
- 7) The Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on March 10, 2022. (Exhibit D-3)
- 8) The Appellant was diagnosed with *Autism Spectrum Disorder, Level I*; and, *Intellectual Disability, Mild*, during this evaluation. (Exhibit D-3)
- 9) The Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5) was administered to evaluate the Appellant's intellectual functioning. (Exhibit D-3)
- 10) The Appellant's WISC-5 results included a Full Scale IQ of 68. (Exhibit D-3)

- 11) Several sub-tests of the WISC-5 were not completed during this evaluation, or the results were not presented on the IPE. (Exhibit D-3)
- 12) The evaluating psychologist for the March 2022 IPE (Exhibit D-3) did not provide an explanation for the incomplete WISC-5 results. (Exhibit D-3)
- 13) The evaluating psychologist for the March 2022 IPE (Exhibit D-3) noted, in the discussion section of the WISC-5 results, “[Appellant’s] full-scale IQ is in the mild range of intellectual disability and the results are valid.”
- 14) The adaptive behavior of the Appellant was measured in March 2022 (Exhibit D-3) using the Adaptive Behavior Assessment System – Third Edition (ABAS-3).
- 15) The ABAS-3 produces results scaled to a mean of ten (10) and a standard deviation of three (3).
- 16) The Appellant’s ABAS-3 results in March 2022 (Exhibit D-3) indicated no eligible scores.
- 17) The Gilliam Autism Rating Scale – Third Edition (GARS-3), was administered to the Appellant during the March 2022 evaluation to determine the probability of, and severity of autism. (Exhibit D-3)
- 18) The Appellant’s GARS-3 results included an Autism Index of 109, which corresponded to a “very likely” probability of *Autism Spectrum Disorder*, and a severity level of three (3). (Exhibit D-3)
- 19) The Appellant was administered the Wide Range Achievement Test – Fifth Edition (WRAT-5), to evaluate learning, and produced no eligible test results. (Exhibit D-3)
- 20) Another evaluation of the Appellant conducted in March 2022 (Exhibit D-6) did not include an eligible diagnosis.
- 21) This evaluation (Exhibit D-6) does not contain ABAS, or other functionality test scores.

### **APPLICABLE POLICY**

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, “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.”

At §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

At §513.6.2.2, this policy addresses the functionality component and its required criteria. The policy requires an applicant to have substantial deficits in at least three of the six (6) major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living domain is further divided into six (6) sub-domains – home living, social skills, employment, health and safety, community, and leisure. Policy requires a minimum of three (3) of these sub-domains to be substantially limited for an applicant to meet the criteria for this major life area.

Functionality policy (§513.6.2.2) also defines substantial deficits 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 [intellectually disabled] normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior.”

## DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent’s decision to deny his application for the I/DD Waiver Program based on its determination that he did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

The Appellant is a 15-year-old male applicant for the I/DD Waiver Program. The Respondent’s denial of the Appellant’s application was based on unmet diagnostic criteria, unmet functionality, and an unmet need for an ICF/IID level of care.

The preliminary review of medical eligibility by the Respondent was based on an Independent Psychological Evaluation (Exhibit D-3) designed specifically for that purpose. The Respondent was unable to approve the Appellant for the program based on this evaluation because of inconsistency between the diagnoses offered and test scores provided. Another evaluation (Exhibit D-6) was reviewed by the Respondent’s reviewing psychologist, but this evaluation lacked the testing instruments needed to quantify the severity of functionality deficits and potentially eligible diagnoses. For this reason, the medical determination of the Respondent was tied to the March 2022 IPE (Exhibit D-3).

Unfortunately, the test results and the diagnoses offered on the March 2022 IPE are inconsistent. The evaluating psychologist concluded the Appellant had a diagnosis of *Intellectual Disability, Mild*; but the test results to corroborate this diagnosis are incomplete without explanation (Exhibit D-3). The psychologist provided test scores from the Appellant on the GARS-3 indicating “very likely” probability of *Autism Spectrum Disorder*, with a severity level of three (3), but provided a diagnosis of *Autism Spectrum Disorder, Level 1*. The March 2022 IPE is not reliable, and the

Appellant does not have an eligible diagnosis for I/DD Waiver Program medical eligibility purposes.

The Appellant did not meet the functionality component of medical eligibility for the I/DD Waiver Program and did not establish a need for an ICF/IID level of care. The Appellant's ABAS-3 scores produced no results in an eligible range, as defined by policy. Results from the WRAT-5 did not indicate substantial deficits in learning or functional academics. Without the diagnostic, functionality, or level of care components of medical eligibility, the Appellant is not eligible for participation in the I/DD Waiver Program.

Based on the reliable information provided at the hearing, the Appellant did not meet the medical eligibility criteria for participation in the I/DD Waiver Program, and the Respondent was correct to deny the Appellant's application.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not have an eligible diagnosis, he has not met the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant did not have test scores to establish substantial adaptive deficits as defined by policy, he has not met the functionality component of medical eligibility for the I/DD Waiver Program.
- 3) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant's application for I/DD Waiver services.

### **DECISION**

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

**ENTERED this \_\_\_\_ Day of May 2022.**

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**Todd Thornton**  
**State Hearing Officer**