



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Inspector General

June 24, 2022

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1689

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  
Janice Brown, KEPRO  
Kerri Linton, Psychological Consultation and Assessment

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-1689**

**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 June 22, 2022 on an appeal filed with the Board of Review on May 26, 2022.

The matter before the Hearing Officer arises from the Respondent's May 3, 2022 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (IDD) Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, Psychological Consultation and Assessment. The Appellant appeared *pro se* and was represented by ██████████, the Appellant's mother. Appearing as a witness for the Respondent was ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Chapter 513
- D-2 Notice, dated May 3, 2022
- D-3 Independent Psychological Evaluation (IPE), dated April 21, 2022
- D-4 ██████████ Record, dated February 11, 2022
- D-5 ██████████ Record, dated April 4, 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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) An application for Medicaid I/DD Waiver Program eligibility was submitted on the Appellant's behalf.
- 2) On May 3, 2022, the Respondent issued a notice advising the Appellant that he was ineligible for the Medicaid I/DD Waiver Program because the documentation provided for review did not include records from the developmental period (before the age of 22) (Exhibit D-2).
- 3) The May 3, 2022 denial stated, "Mental Illness is specifically excluded as a potentially eligible diagnosis" (Exhibit D-2).
- 4) At the time of the May 2, 2022 eligibility denial, the Appellant was 35 years old (Exhibit D-3).
- 5) The Appellant has had a severe mental illness diagnosis since age seven (Exhibit D-3).
- 6) The clinician completing the April 21, 2022 IPE diagnosed the Appellant with Schizophrenia and Moderate Intellectual Disability.
- 7) On February 1 and May 17, 2018 and July 23, 2021, the Appellant was diagnosed with Schizophrenia, unspecified (Exhibit D-4).

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.2.1 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. Mental illness is specifically precluded as an eligible related diagnosis.

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

### **DISCUSSION**

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program because the documentation provided failed to verify the Appellant had an eligible diagnosis manifested before age 22. The Appellant's representative and witness testified that attempts were made to submit records from the developmental period but records could not be obtained. The Appellant's representative argued the Appellant has severe functioning deficits and requires substantial assistance. The Appellant's representative requested the Respondent's denial be reversed.

The Respondent is required to determine the Appellant's eligibility for the Medicaid I/DD Waiver program through a review of an IPE and other documentation deemed appropriate. 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 deciding the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's diagnosis and can only decide if the Respondent correctly determined the Appellant's eligibility based on the diagnosis reflected in the submitted documentation.

To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have an eligible diagnosis established before age 22. No evidence was submitted from the developmental period. Therefore, the presence of an eligible diagnosis before age 22 could not be affirmed. Further, because no eligible diagnosis was established, functioning deficits attributable to an eligible diagnosis could not be verified. The preponderance of evidence indicated that the Appellant had the presence of a severe mental illness at seven years old. The policy specifically precludes mental illness as an eligible diagnosis for establishing Medicaid I/DD Waiver medical eligibility. Because

the evidence failed to verify the Appellant had an eligible diagnosis established during the developmental period, the Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program. Because the Respondent correctly denied the Appellant's medical eligibility, the Appellant's request to reverse the Respondent's decision cannot be granted.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have an eligible diagnosis with concurrent substantial deficits manifested before age 22.
- 2) The preponderance of evidence failed to verify that the Appellant had an eligible diagnosis 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 24<sup>th</sup> day of June 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer