



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
433 MidAtlantic Parkway  
Martinsburg, WV 25404

Jolynn Marra  
Inspector General

Telephone: (304) 352-0805 Fax: (304) 558-1992

August 3, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 22-BOR-1741

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,

Lori Woodward, J.D.  
Certified 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

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-1741**

**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 found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on July 6, 2022, on an appeal filed May 20, 2022.

The matter before the Hearing Officer arises from the March 30, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services. The Appellant was present but appeared by his legal guardians, █. Appearing as a witness for the Appellant was █, social worker at █. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Second Medical Denial Notice, dated March 30, 2022
- D-3 Independent Psychological Evaluation, IPE West Virginia I/DD Waiver, dated December 16, 2021
- D-4 Notice of Denial, dated January 17, 2022
- D-5 Independent Psychological Evaluation (IPE), West Virginia I/DD Waiver, dated June 25, 2021
- D-6 Notice of Denial, dated July 28, 2021

- D-7 Independent Psychological Evaluation, IPE I/DD, West Virginia I/DD Waiver, dated November 16, 2020
- D-8 Notice of Denial, dated November 20, 2020
- D-9 Letter from [REDACTED] Ph.D., dated November 15, 2021
- D-10 Progress Notes, [REDACTED] Initial Psychiatric Evaluation and History & Physical, Part 1, dated November 24, 2021
- D-11 Progress Notes, [REDACTED] Initial Psychiatric Evaluation and History & Physical, Part 2, dated November 24, 2021
- D-12 Individualized Education Program, [REDACTED] Schools, dated December 11, 2018
- D-13 [REDACTED] M.S., Psychological Consulting, Adult Mental Profile, dated September 4, 2019
- D-14 [REDACTED] Ph.D., Neuropsychological Evaluation, dated April 3, 2009
- D-15 [REDACTED] Ph.D., Psychological Evaluation, dated July 2, 2004 and July 16, 2004
- D-16 Letter from [REDACTED] LICSW, dated March 30, 2009
- D-17 Letter from [REDACTED] M.D., dated March 25, 2009
- D-18 Occupational Therapy Evaluation, dated November 28, 2005
- D-19 Individualized Education Program [REDACTED] Schools, dated April 13, 2009
- D-20 DOMA (Diagnostic Online Math Assessment), dated January 26, 2009
- D-21 Individualized Education Program [REDACTED] Schools, March 12, 2012
- D-22 Individualized Education Program [REDACTED] Schools, March 19, 2013
- D-23 Individualized Education Program [REDACTED] Schools, March 5, 2015
- D-24 Individualized Education Program [REDACTED] Schools, March 8, 2016
- D-25 Independent Psychological Evaluation, dated March 1, 2022

**Appellant’s Exhibits:**

- A-1 Comprehensive Psychological Evaluation (ICF Program), dated March 1, 2022, updated April 13, 2022
- A-2 Independent Psychological Evaluation (I/DD Waiver Program), dated March 1, 2022
- A-3 Evaluation Report of Licensed Physician/Psychologist, dated November 12, 2021
- A-4 ICF/IID Determination of Medical Eligibility-Prior Approval denial, dated April 28, 2022
- A-5 Notice of Eligibility Committee and/or Individualized Education Program Team Meeting, dated April 29, 2019

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 applied for services under the I/DD Waiver Program and was denied on January 17, 2022, stating “Documentation provided for review does not consistently indicate an eligible diagnosis. Autism Spectrum Disorder, Restricted, Repetitive Patterns

of Behavior, Interests, or Activities-Level II and Social Communication and Social Interaction-Level III is not considered a severe Related Condition. Additionally, Mental Illness is specifically excluded as a potentially eligible diagnosis. Finally, documentation does not indicate the need for ICF level of care.” (Exhibit D-4)

- 2) A second medical evaluation was requested, and an Independent Psychological Evaluation (IPE) was performed on March 1, 2022. (Exhibit D-25)
- 3) On March 30, 2022, the Appellant’s application was denied because, “Documentation provided for review does not consistently indicate an eligible diagnosis. Autism Spectrum Disorder, is again not diagnosed as severe. Further, the diagnosis of mild ID is not consistently diagnosed and thus cannot be established as an eligible diagnosis. Finally, policy specifically excludes Mental Illness as a potentially eligible diagnosis. The Major Depressive Disorder appears to be a contributing factor in a deterioration of functioning.” The denial further indicated that the “Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Learning, Self-Direction, Mobility, Capacity for Independent Living.” (Exhibit D-2)
- 4) The Appellant has been diagnosed with Autism Spectrum Disorder (ASD) - Level 2, Mild Intellectual Disability (ID), General Anxiety Disorder, and Major Depressive Disorder - recurrent, moderate. (Exhibits A-1, D-5, D-7, D-13).
- 5) On October 16, 2021, the Appellant was admitted to the [REDACTED], West Virginia hospital for attempted suicide.
- 6) The Appellant was later admitted to [REDACTED] on November 24, 2021 where he continues to reside.
- 7) The Appellant attended vocational school, graduated from high school, and worked for a short time at [REDACTED].
- 8) The Appellant is ambulatory, continent, speaks in full sentences, is able to perform activities and tasks, has participated in some sports, and enjoys watching sports. (Exhibits A-1, D-5, D-6, D-7)
- 9) The Appellant is able to perform daily self-care skills with prompting and reminders, is able to perform household chores, and able to complete simple cooking tasks. (Exhibits A-1, D-5, D-6, D-7)

### **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**

On January 17, 2022, the Appellant's most recent I/DD Waiver Program application was denied by the Respondent. The denial notice stated that the basis for the denial was that the "[D]ocumentation provided for review does not consistently indicate an eligible diagnosis. Autism Spectrum Disorder, Restricted, Repetitive Patterns of Behavior, Interests, or Activities-Level II and Social Communication and Social Interaction-Level III is not considered a severe Related Condition. Additionally, Mental Illness is specifically excluded as a potentially eligible diagnosis. Finally, documentation does not indicate the need for ICF level of care." The Appellant requested a second medical evaluation. The Respondent continued to find the Appellant medically ineligible for I/DD Waiver Program services, stating that "[D]ocumentation provided for review does not consistently indicate an eligible diagnosis. Autism Spectrum Disorder, is again not diagnosed as severe. Further, the diagnosis of mild ID is not consistently diagnosed and thus cannot be established as an eligible diagnosis. Finally, policy specifically excludes Mental Illness as a potentially eligible diagnosis. The Major Depressive Disorder appears to be a contributing factor in a deterioration of functioning." The denial further indicated that the "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Learning, Self-Direction, Mobility, Capacity for Independent Living." The Appellant appealed the Respondent's decision.

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) *Diagnosis* of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) *Functionality* of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) *Active Treatment* - the need for active treatment, 4) *ICF/IID Level of Care* need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services.

The Respondent denied the Appellant's application as he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. Although the Appellant was diagnosed with Mild Intellectual Disability, the Respondent found that this

diagnosis has been inconsistent over the years. [REDACTED], the Respondent's witness, testified that the documentation submitted with the Appellant's application showed that he was not identified with Intellectual Disability while he was in school, and that he repeated the second grade due to Autism Spectrum Disorder (ASD), not ID. [REDACTED] stated that the neuropsychological evaluation performed in August 2009, showed that the Appellant had a Full Scale IQ of 84 with low average and average range of scores which are inconsistent with a diagnosis of ID. Additionally, [REDACTED] noted that the Appellant's IQ was never tested prior to 2009, which is extremely unusual for people with ID.

When examining the submitted application documentation, [REDACTED] found that there has been a decline in the Appellant's cognitive abilities due to his mental illness which culminated in suicide attempts. It was [REDACTED] opinion that when scores are so different, it is more associated with mental health issues, especially since there is no consistent evidence of ID which is in a range that would typically require ICF/IID level of care. Moreover, she stated that ID must pre-date mental illness. The Appellant's mental health had been declining since his high school graduation in 2019 which culminated in a suicide attempt in 2021. The Appellant is currently residing in [REDACTED] due to his continued suicidal ideation.

Regarding the Appellant's diagnosis of ASD at the age of 3, [REDACTED] testified that the severity of ASD does not meet policy requirements for program eligibility. The Appellant's diagnosis of ASD, Level 2, was documented in the March 2022 neuropsychological evaluation and consistently over several evaluations throughout since his diagnosis. [REDACTED] testified that a rating of Level 2 indicates that the Appellant's ASD is in the moderate range. While ASD is a potentially eligible diagnosis for the I/DD Waiver Program, an individual must meet the severity criteria to meet the diagnostic criteria found in policy, which a rating of Level 2 does not.

In examining the most current IPE done in March 2022, [REDACTED] noted that the narrative indicated that the Appellant had a high level of skills which would not require an active treatment plan as those needed by institutionalized individuals. The Appellant is able to complete daily living skills with prompting and supervision, is able to assist with household chores, complete simple cooking, able to talk in complete sentences, and able to initiate preferred tasks or activities.

The Appellant's parents who are his legal guardians testified that the Appellant has always had difficulty learning. They stated that the Appellant received special education at an early age and that his ASD and ID came long before his mental illness. [REDACTED] did not deny that the Appellant has had a diagnosis of ASD since age 3 or 4. However, [REDACTED] testified that the Appellant's ASD was not considered severe and was not at a level that requires institutionalized level of care.

Pursuant to policy, an individual must meet all four criteria (diagnosis, functionality, active treatment, and ICF/IID level of care) in order to be considered medically eligible for the I/DD Waiver Program. The Appellant does not meet these criteria. The Respondent's decision to deny I/DD Waiver Program services is affirmed.

**CONCLUSION OF LAW**

Whereas the Appellant does not meet the medical eligibility criteria for the I/DD Waiver Program set forth by policy, the Respondent must deny his application.

**DECISION**

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

**ENTERED this 3<sup>rd</sup> day of August 2022.**

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**Lori Woodward, Certified State Hearing Officer**