



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

Bill J. Crouch
Cabinet Secretary

Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 352-0805 Fax: (304) 558-1992

Jolynn Marra
Inspector General

January 27, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 21-BOR-2491

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.: 21-BOR-2491

**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 January 20, 2022, on an appeal filed December 15, 2021.

The matter before the Hearing Officer arises from the Respondent's November 24, 2021 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 Kerri Linton. 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 November 24, 2021 |
| D-3 | Independent Psychological Evaluation (IPE), dated November 1, 2021 |

- D-4 Psychoeducational Evaluation
Date of evaluation: July 22, 2020
- D-5 Eligibility Committee Report
 █ County Schools
Date of Report: September 28, 2020
- D-6 Teacher Report – Reevaluation
Date Completed: October 1, 2020
- D-7 E/IEP Result Form and Individualized Education Program (IEP)
 █ County Schools
IEP Meeting Date: October 2, 2020
- D-8 Individualized Education Program (IEP)
 █ County Schools
IEP Meeting Date: October 7, 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) Kerri Linton, 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 November 24, 2021 (Exhibit D-2).
- 5) This notice (Exhibit D-2) provided the basis for denial as “Documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe.”

- 6) The Appellant was diagnosed with *Autism, Social Communication and Social Interaction, Level 2, Requiring Substantial Support; Restricted Repetitive Patterns of Behavior Level 2, Requiring Substantial Support*, in a November 2021 psychological evaluation (Exhibit D-3).
- 7) Ms. Linton testified that Autism is a potentially eligible diagnosis for the I/DD Waiver Program if it is severe.
- 8) Ms. Linton further testified that Autism diagnosed at Level 3 is severe, for purposes of I/DD Waiver Program medical eligibility.
- 9) 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.”
- 10) The adaptive behavior of the Appellant was measured in November 2021 (Exhibit D-3) using the Adaptive Behavior Assessment System – 3 (ABAS-3), an instrument with sub-domains corresponding to the “major life areas” identified for I/DD Waiver Program medical eligibility.
- 11) The ABAS-3 was completed by the Appellant’s mother, [REDACTED]. (Exhibit D-3)
- 12) The ABAS-3 produces results scaled to a mean of ten (10) and a standard deviation of three (3).
- 13) The Appellant’s ABAS-3 score in the sub-domain of *Community Use* – corresponding with the *Community* sub-domain of the “major life area” of *Capacity for Independent Living* – was a two (2), or “less than one percentile” of standardized scores on the instrument. (Exhibit D-3)
- 14) The Appellant was administered the Wide Range Achievement Test, Fifth Edition (WRAT), during the November 2021 psychological evaluation (Exhibit D-3), to measure academic achievement.
- 15) The WRAT produces scores with a mean of 100 and a standard deviation of 15.
- 16) With results on the WRAT ranging from 69 to 84, the Appellant did not have scores indicating “substantial deficits,” for I/DD Waiver Program medical eligibility purposes. (Exhibit D-3)
- 17) The Gilliam Autism Rating Scale – Third Edition (GARS-3), is a screening instrument used to measure both the likelihood of the presence of Autism, or Autism Spectrum Disorder, and its severity level. (Exhibit D-3)
- 18) The GARS-3 was completed, regarding the Appellant, by the Appellant’s mother. (Exhibit D-3)

- 19) The Appellant’s GARS-3 results – both from an Autism Index based on four (4) scores and on an Autism Index based on six (6) scores – indicated Autism with a severity at Level 2. (Exhibit D-3)

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 75th 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.

An independent psychological evaluation of the Appellant (Exhibit D-3) was conducted on November 1, 2021. The evaluating psychologist diagnosed the Appellant with Autism, a potentially eligible diagnosis for the I/DD Waiver Program, depending on its severity. The

diagnosis and the GARS-3 results for the Appellant established the severity of his diagnosis as Level 2. Although this level is noted as “requiring substantial support,” test scores and a diagnosis at Level 3 is required to meet the policy requirement of a “...related condition which constitutes a severe and chronic disability...” The Appellant did not have a diagnosis of a related condition which is severe.

The policy for the I/DD Waiver Program additionally requires applicants meet a functionality requirement. The Appellant was evaluated in this area using the ABAS-3 instrument, resulting in an eligible score for *Community Use*, which corresponds with one of the sub-domains of the “major life area” of *Capacity for Independent Living*. Policy requires three (3) of the six (6) sub-domains of the *Capacity for Independent Living* to be met to establish a “substantial deficit” in the category as a whole. The Appellant did not meet this standard in enough sub-domains to indicate a substantial deficit in the major life area of *Capacity for Independent Living*, and, with no other deficits, did not meet the functionality requirement of substantial deficits in at least three (3) major life areas.

The Appellant’s mother testified on the Appellant’s behalf. She testified that she is concerned of her son’s greater need for care as he gets older. She testified that she believes people will take advantage of him, and that the Appellant does not have a concept of money. Although the Appellant has delays, when these delays are measured using standardized test scores, they do not meet the criteria set by I/DD Waiver Program policy. The Appellant did not meet the diagnostic component of the medical eligibility criteria because he did not have a diagnosis of a “related condition” which is severe. He did not meet the functionality component of the medical eligibility criteria because test scores did not reveal substantial deficits in any of the major life areas defined by I/DD Waiver Program policy.

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 correctly denied the Appellant’s application.

CONCLUSIONS OF LAW

- 1) Because the Appellant lacks an eligible diagnosis which is severe, he has not met the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant lacks substantial deficits in any of the major life areas defined by I/DD Waiver Program 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 January 2022.

**Todd Thornton
State Hearing Officer**