

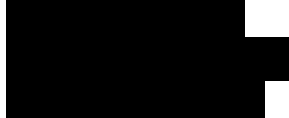


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review

Jeffrey H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

February 28, 2023



RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 23-BOR-1139

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Decision Recourse
Form IG-BR-29

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

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

█, A MINOR,

Appellant,

v.

Action Number: 23-BOR-1139

**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 minor. 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 February 22, 2023.

The matter before the Hearing Officer arises from the Respondent's September 15, 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 Charley Bowen, Psychological Consultation and Assessment. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into the evidence.

Department's Exhibits:

- D-1 Chapter 513 I/DD Waiver Program Excerpt
- D-2 Notice, dated September 15, 2022
- D-3 Independent Psychological Evaluation (IPE), dated August 26, 2022
- D-4 IPE, dated July 6, 2022
- D-5 Notice, dated July 18, 2022
- D-6 █ County Schools Individualized Education Program (IEP)
- D-7 Star Family Report

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) On September 15, 2022, the Respondent issued a notice denying the Appellant’s medical eligibility for the Medicaid I/DD Waiver Program because the documentation submitted for review failed to indicate an eligible diagnosis of intellectual disability or a related condition that is severe (Exhibit D-2).
- 2) On August 26, 2022, [REDACTED], MA, completed an IPE of the Appellant (Exhibit D-3).
- 3) The Appellant did not have a diagnosis of Intellectual Disability (Exhibit D-3, D-4, and D-6).
- 4) The August 26, 2022 IPE reflected diagnoses of Attention-Deficit/Hyperactivity Disorder (ADHD), Specific Learning Disorder with impairment in reading, Specific Learning Disorder with impairment in written expression, and Specific Learning Disorder with impairment in mathematics (Exhibit D-3).
- 5) On July 6, 2022, [REDACTED], PhD, completed an IPE of the Appellant (Exhibit D-4).
- 6) The July 6, 2022 IPE reflected a diagnosis of ADHD (by history) (Exhibit D-4).
- 7) The Appellant is eligible for individualized educational programming because of Other Health Impaired (OH) (Exhibit D-6).

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 a 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 diagnosis of intellectual disability or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22. Mental illness is specifically precluded as an eligible related condition.

For the Medicaid I/DD Waiver Program, individuals must meet the criteria for medical eligibility not only by test scores, but also by narrative descriptions contained in the documentation.

To be eligible to receive Medicaid 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. The Appellant's representative contested the Respondent's denial and argued that the Appellant has developmental delays that should qualify her for the Medicaid I/DD Waiver Program.

The Respondent is required to determine the Appellant's eligibility for the Medicaid I/DD Waiver Program through a review of the IPE and other documentation. 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. The diagnoses provided by the clinicians administering the IPE did not reflect an

Intellectual Disability diagnosis. The Respondent testified that the presence of an intellectual disability was not supported by testing and narrative descriptions of the IPEs. During the hearing, the Respondent's representative testified that Specific Learning Disorders are not a related Intellectual Disability diagnosis.

The Respondent's representative testified that ADHD is a mental illness diagnosis. The policy specifies that mental illness diagnoses are ineligible for qualifying eligibility for the Medicaid I/DD Waiver Program. The evidence revealed that the Appellant's individualized education programming was to address limitations related to OH, not due to an intellectual disability or severe related condition.

Functioning deficits must be related to an eligible diagnosis. While the evidence indicated that the Appellant has limitations in some areas of functioning, the evidence failed to establish that the Appellant had severe adaptive deficits related to an eligible diagnosis.

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.
- 3) The Respondent correctly denied the Appellant's 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 28th day of February 2023.

Tara B. Thompson, MLS
State Hearing Officer