



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

Jeffery H. Coben, MD  
Interim Cabinet Secretary

Sheila Lee  
Interim Inspector General

April 13, 2023



RE: , A PROTECTED INDIVIDUAL v. WVDHHR  
**ACTION NO.: 23-BOR-1256**

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: BMS/PC&A/KEPRO

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 23-BOR-1256**

**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 convened on March 30, 2023, on an appeal filed February 21, 2023.

The matter before the Hearing Officer arises from the January 25, 2023 decision by the Respondent to deny the Appellant's application for services under the I/DD Waiver program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultant for the Bureau of Medical Services. The Appellant appeared by his parents ■. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau of Medical Services Provider Manual § 513
- D-2 Notice of Decision dated January 25, 2023
- D-3 Independent Psychological Evaluation dated January 12, 2023
- D-4 Independent Psychological Evaluation dated November 22, 2023
- D-5 Notice of Decision dated December 20, 2023
- D-6 Medical Records ■
- D-7 Psychiatric Evaluation dated August 3, 2016
- D-8 Medical Records ■
- D-9 Plan of Services dated March 21, 2022
- D-10 Individualized Educational Plan dated February 24, 2022 Part 1
- D-11 Individualized Educational Plan dated February 24, 2022 Part 2

## **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, through his parents, applied for services under the I/DD Waiver program.
- 2) On November 22, 2023, an Independent Psychological Evaluation (IPE), a requirement of the application process, was conducted with the Appellant. (Exhibit D-4)
- 3) The initial IPE diagnosed the Appellant with Autism Spectrum Disorder (Level 2), Mild Intellectual Disability and Attention Deficit Hyperactivity Disorder. (Exhibit D-4)
- 4) On December 20, 2022, the Respondent issued a Notice of Denial which advised the Appellant that his application for I/DD Waiver services had been denied due to "documentation provided for review is inconsistent with respect to an eligible diagnosis. Mild Intellectual Disability is rendered today but not reflected in the documentation provided for review. Further, documentation does not indicate a related condition which is severe."
- 5) A second medical evaluation was requested in response to the December 20, 2022 Notice of Denial.
- 6) On January 12, 2023, an additional Independent Psychological Evaluation (IPE) was conducted with the Appellant. (Exhibit D-3)
- 7) The additional IPE diagnosed the Appellant with Autism Spectrum Disorder, Level 2, Intellectual Disability (Mild), Unspecified Disruptive Impulse-Control and Conduct Disorder, and Attention-Deficit Hyperactivity Disorder.
- 8) On January 25, 2023, the Respondent issued a Notice of Denial which advised the Appellant that his application for I/DD Waiver services had been denied due to "documentation provided for review is inconsistent with respect to an eligible diagnosis. Mild Intellectual Disability is rendered today but not reflected in the documentation provided for review. Further, documentation does not indicate a related condition which is severe."

## 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**

To be determined eligible for the I/DD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and the requirement of ICF/IID level of care. Based on the information and evaluations submitted for review, the Appellant failed to meet the diagnostic eligibility criteria. Eligibility is established in the diagnostic area when an individual presents a diagnosis of an intellectual disability, or a related condition which constitutes a severe, and chronic disability with concurrent substantial deficits which manifested prior to age 22. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

As part of the application process, multiple Independent Psychological Evaluations were completed on the Appellant, which failed to yield a severe diagnosis to determine program eligibility. Kerri Linton, Psychological Consultant for the Bureau of Medical Services, testified that the Appellant's denial for services under the I/DD Waiver services program is two-fold. First, Ms. Linton testified to establish eligibility under the diagnostic criteria under the I/DD Waiver program, a Level 3 severity rating for Autism Spectrum Disorder must be established. The IPE completed as part of the application process, diagnosed the Appellant with Autism Spectrum Disorder, Level 2, which did not meet the severity rating under the diagnostic requirements. Second, the IPE diagnosed the Appellant with Mild Intellectual Disability; however, the diagnosis was not supported by relevant test scores as

part of the IPE. As part of the second IPE (Exhibit D-3), the Appellant was administered a Wechsler Abbreviated Scale of Intelligence II, in which the Appellant obtained scores of 76-Verbal Comprehension, 75-Perceptual Reasoning, and a 73-Full Scale IQ. Ms. Linton indicated that the test scores indicate a borderline range of functioning. Additionally, the Appellant was administered a Gilliam Autism Rating Scale as part of the IPE. The Appellant achieved an Autism Index score of 111, which indicates a severity level of 3. However, the attending psychologist indicated that the “ratings obtained through the administered test overestimate the severity of the Appellant’s autism spectrum symptoms.” (Exhibit D-3)

The Appellant completed the initial IPE on November 3, 2022. The IPE notes that the Appellant’s attitude and behavior were impatient and fidgety, memory was severely deficient, and attention/concentration was severely deficient. As part of the evaluation, the Appellant was administered a WISC-V to evaluate intellectual and cognitive abilities. Ms. Linton opined that the Appellant’s Attention Deficit Hyperactivity Disorder may have interfered with the Appellant’s performance on the WISC-V, as his scores in areas were lower than previously administered tests. Additional information provided for review revealed diagnoses of Autism Spectrum Disorder, but indicated no severity level.

The Appellant’s mother testified that the Appellant requires a supervised level of care due to being a flight risk. The Appellant’s mother testified that the Appellant requires total assistance with bathing, dressing, and preparation of food. The Appellant’s mother opined that her son meets the eligibility criteria for the program due to the assistance he requires with daily activities.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) The Appellant did not have a diagnosis of an intellectual disability or a related condition which is considered severe; therefore, he did not meet the diagnostic criteria for services under the I/DD Waiver program.

### **DECISION**

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

**ENTERED this \_\_\_\_\_ day of April 2023.**

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Eric L. Phillips  
State Hearing Officer

