



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

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Board of Review  
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Sheila Lee  
Interim Inspector General

February 1, 2023



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 22-BOR-2540

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: Decision Recourse  
Form IG-BR-29

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

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**ACTION NO.: 22-BOR-2540**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on January 11, 2023, on an appeal filed with the Board of Review on November 30, 2022.

The matter before the Hearing Officer arises from the Respondent's November 7, 2022 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver.

At the hearing, the Respondent appeared by Linda Workman, Psychologist, Psychological Consultation and Assessment (PC&A). The Appellant appeared and was represented by Judy Spears, his mother. Appearing as a witness on behalf of the Appellant was ■ Counselor. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services I/DD Waiver § 513.6.2 through 513.6.4
- D-2 Notice, dated November 7, 2022
- D-3 Independent Psychological Evaluation (IPE), dated October 19, 2022
- D-4 Adaptive Behavior Assessment System, Third Edition (ABAS-3) Score Summary
- D-5 ■ County Schools Autism Diagnostic Observation Schedule-Second Edition
- D-6 ■ Campus Discharge/Transfer Order Sheet, dated February 4, 2023
- D-7 Kaufman Test of Educational Achievement, Third Edition, Report and Summary Table
- D-8 ■ Psychiatric Evaluation, dated February 12, 2020

- D-9 IPE, dated August 22, 2022
- D-10 Notice, dated September 22, 2022
- D-11 IPE, dated June 27, 2022
- D-12 Notice, dated June 30, 2022
- D-13 [REDACTED] Health Services Association Patient Care Summary
- D-14 Individualized Education Plan (IEP), dated June 29, 2020
- D-15 IEP, meeting date May 3, 2022
- D-16 Student Transcript
- D-17 Preliminary Grade Report
- D-18 Premier Psychological Evaluation

**Appellant's Exhibits:**

- A-1 Letter

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 November 7, 2022, a notice was sent advising the Appellant his application for eligibility was denied because the documentation submitted for review failed to indicate an eligible diagnosis or the need for an ICF level of care (Exhibit D-2).
- 2) The Appellant has a history of intermittent mental health-related hospitalizations since the age of 8 or 9. (Exhibits D-3, D-8, and D-18).
- 3) On September 19, 2019, a Psychological Evaluation was completed with the Appellant by [REDACTED] M.A. for "diagnostic assistance and treatment planning" (Exhibit D-18).
- 4) The September 19, 2019 Psychological Evaluation recommendations stated, "At this time, symptoms that are mainly endorsed have to do with generalized anxiety" (Exhibit D-18).
- 5) The September 19, 2019 Psychological Evaluation reflected diagnoses of Attention-Deficit Hyperactivity Disorder; Oppositional Defiant Disorder; Bipolar 1 Disorder, by History; Specific Learning Disorder, Reading; Specific Learning Disorder, Reading Comprehension; Specific Learning Disorder, Math Computation (Exhibit D-18).
- 6) The September 19, 2019 Psychological Evaluation narrative reflected that the Appellant was within the "borderline range for intellectual functioning (Exhibit D-18).
- 7) On December 16, 2019, an Autism Diagnostic Observation Schedule-Second Edition (ADOS-2) completed for educational purposes, by a school psychologist, resulted in an ADOS-2 classification of Autism (Exhibit D-5).
- 8) On February 12, 2020, a Psychiatric Evaluation was completed with the Appellant by

Emily Roig, MD (Exhibit D-8).

- 9) The February 12, 2020 Psychiatric Evaluation reflected diagnoses of Bipolar Disorder; Intellectual Disability; Autism Spectrum Disorder; Attention-Deficit Hyperactivity Disorder; Oppositional Defiant Disorder; Mathematics Disorder; Specific Reading Disorder; and Generalized Anxiety Disorder (Exhibit D-8).
- 10) The February 12, 2020 diagnoses of Autism Spectrum Disorder and Intellectual Disability were based, in part, on the September 19, 2019 Psychiatric Evaluation, which did not provide these diagnoses (Exhibit D-8 and D-18).
- 11) The February 12, 2020 Psychiatric Evaluation did not provide standardized measures for evaluating Autism Spectrum Disorder and Intellectual Disability (Exhibit D-8).
- 12) On June 29, 2020, the Appellant's educational placement was changed because the Appellant's "behavioral and therapeutic concerns require his education to be delivered in a residential school environment with a highly structured behavior management program (Exhibit D-14).
- 13) Independent Psychological Evaluations (IPE) were completed with the Appellant on June 27, August 22, and October 19, 2022 (Exhibit D-3).
- 14) The June 27, 2022 IPE reflected diagnoses of Autism Spectrum Disorder, Level 2; Intellectual Disability, mild; Attention Deficit/Hyperactivity Disorder; Bipolar Disorder (Exhibit D-11).
- 15) The August 22, 2022 IPE reflected diagnoses of Bipolar Disorder; Oppositional Defiant Disorder; Attention Deficit/Hyperactivity Disorder; Specific Learning Disorder in Mathematics (by history); and Specific Learning Disorder in Reading (by history) (Exhibit D-9).
- 16) The IPE narrative reflected, "Although this score may be indicative of autism, [the Appellant's] presentation was inconsistent with autism" (Exhibit D-9).
- 17) The October 19, 2022 IPE reflected diagnoses of Bipolar Disorder; Oppositional Defiant Disorder; Autism Spectrum Disorder, Level 1; and Attention Deficit/Hyperactivity Disorder, combined type (Exhibit D-3).

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 513.6.2 provides in pertinent parts:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of

functioning and reported history.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The MECA determines the qualification of an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

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

**Bureau for Medical Services (BMS) Manual § 513.6.2.1 provides in pertinent parts:**

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.

Autism is a related condition which may, if severe and chronic in nature, make an individual eligible for the IDDW Program. 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.

**Bureau for Medical Services (BMS) Manual § 513.6.2.2 provides in pertinent parts:**

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 75th percentile when derived from ID normative populations when intellectual disability 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.

## **DISCUSSION**

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program because submitted documentation did not corroborate the presence of an eligible diagnosis. The Appellant disagreed with the Respondent's denial and argued that the Appellant has eligible diagnoses.

To be eligible for the Medicaid I/DD Waiver Program, medical eligibility must be established by an IPE that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior.

### **Diagnosis**

To prove that the Respondent correctly denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program, the Respondent had to demonstrate by a preponderance of the evidence that the Appellant lacked an eligible diagnosis of intellectual disability or a related condition that is severe. The Respondent testified that to meet the severity level for Medicaid I/DD Waiver Program eligibility, the Appellant's diagnosis of Autism had to be qualified as Level 3.

### ***Mental-Health Diagnosis***

The preponderance of evidence revealed that historically, the Appellant has received treatment and

academic interventions specifically related to the Appellant's mental health and behaviors. The evidence verified that the Appellant has mental illness diagnoses for which he is prescribed medication. The Appellant's initial mental health diagnosis, at age seven, pre-dated the Appellant's diagnoses of Autism and Intellectual Disability. Pursuant to the policy, mental illness diagnoses cannot qualify an individual for Medicaid I/DD Waiver program medical eligibility. The policy does not exclude individuals with co-occurring mental illness and an eligible diagnosis from establishing medical eligibility for the Medicaid I/DD Waiver Program. The preponderance of evidence must demonstrate that functioning deficits are related to an eligible diagnosis, not a mental-health diagnosis.

The preponderance of evidence failed to establish that the Appellant's functioning limitations were severe or related to a diagnosis of Intellectual Disability or a severe related condition. Conversely, the narrative of the documentation indicated that the Appellant's symptoms were related to mental health.

### ***Intellectual Disability Diagnosis***

Although a February 2020 psychiatric evaluation indicated that the Appellant had diagnoses of Intellectual Disability and Autism Spectrum Disorder, the preponderance of evidence indicated that the diagnoses were unreliable because the evaluator failed to conduct any new evaluations to corroborate the diagnoses and relied upon previous evaluations which did not result in a diagnosis of Intellectual Disability or of Autism Spectrum Disorder. Additionally, the Respondent's representative testified that the additional diagnoses of specific learning disorders rules out an Intellectual Disability diagnosis. The Respondent's representative testified that specific learning disorders are not diagnosed when a diagnosis of Intellectual Disability is present. The Respondent's representative testified that specific learning disorders are indicated for people with average or above average intelligence that have deficits in certain areas of learning. No reliable evidence was submitted to refute the Respondent's argument regarding the unreliability of the February 2020 psychiatric evaluation.

The June 27, 2022 IPE reflected a diagnosis of Intellectual Disability, mild. The Respondent's representative testified that the testing results used to establish the diagnosis was unreliable because it significantly contrasted with other intelligence testing reflected in the documentation. The Respondent's representative testified that the Appellant's performance on other intelligence testing and submitted records failed to corroborate a diagnosis of Intellectual Disability. No evidence was submitted to corroborate the reliability of the Intellectual Disability diagnosis indicated on the June 27, 2022 IPE.

### ***Autism Diagnosis***

The evidence indicated that the Appellant was first diagnosed with Autism at age 15 for educational purposes. To meet eligibility as a severe related condition for Medicaid I/DD Waiver eligibility, the Appellant's diagnosis of Autism had to be qualified as Level 3.

On December 16, 2019, an ADOS-2 was administered and a classification of Autism was established for educational purposes. The narrative indicated the Appellant had "very elevated levels of behavior associated with Autism." However, no standardized tests were administered to establish severity.

The June 27, 2022 IPE reflected a diagnosis of Autism Spectrum Disorder, Level 2. The ABAS-3 administered indicated severe functioning deficits in all areas of functioning; however the ABAS-3 scores were inconsistent with the narrative regarding the Appellant's functioning. Therefore, the ABAS-3 scores were determined to be unreliable. The IPE conducted on August 22, 2022 stipulated that although the Appellant's scores indicate the presence of Autism, his presentation was inconsistent with Autism. The October 19, 2022 IPE reflected a diagnosis of Autism, Level 1. No reliable evidence was submitted to establish that the Appellant had a diagnosis of Autism Spectrum Disorder Level 3.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet medical eligibility criteria for diagnosis, functionality, need for active treatment, and require an ICF/IID Level of Care.
- 2) To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have a diagnosis of Intellectual Disability or a chronic and severe related condition.
- 3) The diagnosis of Intellectual Disability was not corroborated by a preponderance of the evidence.
- 4) To be eligible for the Medicaid I/DD Waiver Program, the Appellant's diagnosis of Autism had to be qualified as a Level 3.
- 5) The preponderance of evidence failed to demonstrate that the Appellant has a diagnosis of Autism, Level 3.

### **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 1<sup>st</sup> day of February 2023.

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