



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

March 16, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-1160

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
PC&A
KEPRO

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1160

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

**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 March 2, 2023, on a timely appeal filed February 1, 2023.

The matter before the Hearing Officer arises from the December 7, 2022 decision by the Respondent to deny medical eligibility for the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, PC&A. Observing but not appearing as a witness for the Respondent was Jordan Mitchell. The Appellant appeared pro se. Appearing as witnesses were █, the Appellant's mother, and █. 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 December 7, 2022 |
| D-3 | Independent Psychological Evaluation (IPE) |

Evaluation date: November 17, 2022

D-4 Individualized Education Program (IEP)

██████████ County Schools

IEP Meeting Date: February 9, 2021

D-5 Independent Evaluation, dated July 27, 2021

D-6 IPE

Evaluation date: March 15, 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 December 7, 2022 (Exhibit D-2).
- 5) This notice (Exhibit D-2) provided the basis for denial as "Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 6) The Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on November 17, 2022. (Exhibit D-3)
- 7) The evaluating psychologist from the November 2022 (Exhibit D-3) evaluation did not provide an eligible diagnosis of the Appellant.
- 8) The Appellant was administered the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) during the November 2022 (Exhibit D-3) evaluation.

- 9) Results from the WISC-V are converted to standard scores with a mean of 100 and a standard deviation of 15.
- 10) The Appellant obtained a Full Scale IQ of 74 on the WISC-V. (Exhibit D-3)
- 11) The Appellant was administered the Wide Range Achievement Test-5 (WRAT-5) during the November 2022 (Exhibit D-3) evaluation.
- 12) Results from the WRAT-5 are converted into standard scores with a mean of 100 and a standard deviation of 15.
- 13) The Appellant's WRAT-5 results ranged from a low of 60 on Math Computation, to a high of 94 on Sentence Comprehension.
- 14) The Appellant was administered the Gilliam Autism Rating Scale – Third Edition (GARS-3), during the November 2022 (Exhibit D-3) evaluation.
- 15) The evaluating psychologist noted, regarding, the Appellant's GARS-3 results (Exhibit D-3), "The ratings appear to overestimate the severity of [Appellant's] ASD symptoms."
- 16) The Appellant's needs in the school system were assessed in an IEP from ██████ County Schools (Exhibit D-4) developed on February 9, 2021.
- 17) The Appellant's 2021 IEP (Exhibit D-4) determined the amount of time the Appellant would spend in a general education environment at 78%, and the remaining 22% of the Appellant's school time would be spent in a special education environment.
- 18) On July 27, 2021, the Appellant (Exhibit D-5) was evaluated for the West Virginia Children with Serious Emotional Disorder Waiver.
- 19) This evaluation (Exhibit D-5) did not include current testing results relevant to the I/DD Waiver Program.
- 20) This evaluation (Exhibit D-5) did not offer an eligible diagnosis for I/DD Waiver purposes for the Appellant.
- 21) The Appellant was evaluated on March 15, 2021 (Exhibit D-6) for the I/DD Waiver Program.
- 22) The Appellant also obtained a Full Scale IQ of 74 on the WISC-V administered in 2021 (Exhibit D-6).
- 23) The Appellant obtained WRAT-5 scores ranging from a low of 69 on Math Computation, to a high of 93 on Sentence Comprehension, during the 2021 evaluation (Exhibit D-6).

- 24) In response to a 2021 application for the I/DD Waiver Program, the Respondent issued an April 15, 2021 denial letter (Exhibit D-7) which provided the reason 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. In addition, substantial adaptive delays must be attributable to the presence of an eligible diagnosis. The need for ICF/IID level of care is not supported withing [*sic*] the documentation submitted for review.”

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, policy 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.

The Respondent’s denial of the Appellant’s application was based on an unmet diagnostic requirement. The Appellant submitted documents from 2022, as well as documents from a 2021 application for the I/DD Waiver Program. These documents did not show a diagnosis of intellectual disability or a related condition, per the testimony of the Respondent’s reviewing psychologist and expert witness, Kerri Linton.

Testing of the Appellant did not support such a diagnosis. An evaluating psychologist found the Appellant’s GARS-3 results unreliable and did not diagnose the Appellant with Autism Spectrum

Disorder. At a high severity level, such a diagnosis could be potentially eligible, but not when based on unreliable test scores. Testing of the Appellant's intellectual functioning and academic achievement levels did not reach the substantial deficit threshold of 'three standard deviations below the mean' to support a diagnosis of intellectual disability, had one been offered.

Testimony from the Appellant's mother, and her therapist, [REDACTED] described the Appellant as unable or unwilling to perform some daily tasks. Ms. Linton testified the I/DD Waiver Program evaluates individuals on their skills and ability to perform tasks, not on their willingness to perform them or participate. School records showed the Appellant was participating the majority of time in a regular school environment, as opposed to a special education environment.

Without the necessary eligible diagnosis component, the Appellant has not met medical eligibility criteria for the I/DD Waiver Program, and the Respondent correctly denied the Appellant's application on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have an eligible diagnosis for the I/DD Waiver Program, the diagnostic component of medical eligibility is unmet.
- 2) Because the diagnostic component is not met, the Appellant did not meet medical eligibility as a whole.
- 3) Because the Appellant did not meet the medical eligibility requirements, the Respondent correctly denied the Appellant's application for the I/DD Waiver Program.

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 March 2023.

**Todd Thornton
State Hearing Officer**