



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

May 12, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED PERSON v. WV DHHR
ACTION NO.: 23-BOR-1292

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,

Lori Woodward, J.D.
Certified 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 PERSON,

Appellant,

v.

Action Number: 23-BOR-1292

**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 PERSON. 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 May 10, 2023, on an appeal filed February 27, 2023.

The matter before the Hearing Officer arises from the December 5, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charlie Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by his father, █. Appearing as a witness for the Appellant was his aunt, █. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.4
- D-2 Denial Notice, dated December 5, 2022
- D-3 Independent Psychological Evaluation, IPE I/DD, West Virginia I/DD Waiver, evaluation date November 29, 2022
- D-4 Medical records, Encounters and Procedure notes dated September 9, 2013, September 4, 2012, August 29, 2011, August 23, 2010,
- D-5 Medical records, Encounters and Procedure notes dated September 3, 2008, August 28, 2008, April 30, 2007
- D-6 West Virginia Department of Health and Human Resources, Comprehensive Psychological Evaluation, evaluation date December 13, 1999

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 is a 27-year-old male who applied for services under the I/DD Waiver Program and underwent an Independent Psychological Evaluation (IPE) on November 29, 2022. (Exhibit D-3)
- 2) On December 5, 2022, the Respondent sent notification to the Appellant that the “Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitation in the following major life areas: Self-Care, Receptive or Expressive Language, Mobility, Capacity for Independent Living.” (Exhibit D-2)
- 3) The Respondent conceded the Appellant does meet the diagnosis component for medical eligibility.
- 4) The Respondent conceded that the Appellant has two substantial adaptive deficits in the major life areas of *Learning* and *Self-Direction*. (Exhibit D-2)
- 5) The Adaptive Behavior Assessment System, Third Edition-Parent Form (ABAS-3) was administered during the November 2022 evaluation of the Appellant. (Exhibit D-3)
- 6) The ABAS-3 results for the Appellant were based on the responses provided by his father. (Exhibit D-3)
- 7) The ABAS-3 produces results scaled to a mean of 10 and a standard deviation of 3, scores of 1 and 2 are deemed to be indicative of a substantial deficit in the area tested.
- 8) The Appellant obtained a qualifying score of 1 in the areas of *Community Use*, which is a sub-domain of *Capacity of Independent Living (CIL)*, *Functional Academics*, and *Self Direction*. (Exhibit D-3)
- 9) With results on the ABAS-3 in other tested areas ranging from 3 to 5, the Appellant did not have scores indicating “substantial deficits,” for the I/DD Waiver Program. (Exhibit D-3)
- 10) The Appellant is able to independently complete tasks with prompting and supervision in the area of *Self-Care*. (Exhibit D-3)

- 11) The Appellant did not have substantial deficits in three subdomains of the major life area of capacity for independent living. (Exhibit D-3)

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, states: To be medically eligible, the applicant must require a 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. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

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 for 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 Provider Manual §513.6.2.1, *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 IDDW 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 disabilities 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 disabilities.

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.

Bureau for Medical Services Provider Manual §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 75th 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.

Bureau for Medical Services Provider Manual §513.6.2.3, *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

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) Diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) Functionality of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) Active Treatment - the need for active treatment, 4) ICF/IID Level of Care need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA 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 MECA followed the policy when deciding the Appellant's I/DD Waiver eligibility. Additionally, the Board of Review cannot make clinical determinations regarding the Appellant's major life area deficit severity and can only decide if the Respondent correctly determined the Appellant's eligibility based on the major life area deficit severity reflected in the submitted documentation. The Respondent must show by a preponderance of evidence that it correctly denied the Appellant's I/DD Waiver application.

The Respondent's representative stipulated that the Appellant met the diagnosis component for medical eligibility and had substantial adaptive deficits in two of the required three major life areas of *Learning* and *Self-Direction*. The Respondent denied the Appellant's application as he did not meet the required three or more substantial adaptive functional deficits needed to meet the functionality criteria for program eligibility. The Appellant appeals the Respondent's decision asserting that the Appellant should have been awarded substantial adaptive deficits in the major life areas of *Self-Care* and *Capacity for Independent Living*.

The Respondent showed by a preponderance of evidence that the Appellant did not meet the functionality criteria for program eligibility. Charlie Bowen, the Respondent's consulting psychologist, testified that the November 2022 IPE narrative reflected the test scores the Appellant received in adaptive behavior testing, ABAS-3. The ABAS-3 showed substantial adaptive deficits in the areas *Community Use*, which is a sub-domain of CIL, *Functional Academics*, and *Self-Direction*, with scores of 1. In the area of *Self-Care*, the Appellant scored a 4, and in the other sub-domains of CIL of *Home Living*, *Leisure*, *Health and Safety*, and *Social*, the Appellant scores ranged from 3 to 5.

Mr. Bowen noted that the November 2022 IPE reflected the Appellant's adaptive functioning after the developmental period at age 27. The only other documentation submitted showing the Appellant's adaptive functioning during his developmental period was a Comprehensive Psychological Evaluation done in December 1999, when the Appellant was 4 years old. The

adaptive behavior testing used at the time was the Vineland Adaptive Behavior Scales, Interview Edition, which rated domains with age-equivalent scores. The examining psychologist concluded that the Appellant exhibits moderate deficits in all areas of adaptive living skills. Mr. Bowen explained that this documentation does not support that the Appellant demonstrated substantial adaptive deficits during the developmental period.

The evidence presented indicated that the Appellant requires assistance managing his medical needs, cooking, shopping, and being safe at home and in the community. While the evidence presented established that the Appellant has limitations in the sub-domains of capacity for independent living and would be incapable of living independently, the evidence failed to establish that the Appellant had significant delays in three subdomains of capacity for independent living. This is also true with the major life area of *Self-Care*. The evidence reflected that the Appellant requires prompting and supervision to appropriately complete self-care tasks but can independently perform self-care tasks once prompted.

The preponderance of the evidence showed that the Appellant did not have severe adaptive limitations in at least three of the six major life areas needed to meet the functionality component for I/DD Waiver eligibility. The Respondent's decision to deny the Appellant's I/DD Waiver application is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have at least three substantial functional deficits needed for the I/DD Waiver Program, the functionality component of medical eligibility is unmet.
- 2) Because the functionality component is not met, the Appellant did not meet medical eligibility for the I/DD Waiver program.
- 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 Respondent's denial of the Appellant's I/DD Waiver Program application.

ENTERED this 12th day of May 2023.

Lori Woodward, Certified State Hearing Officer