



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

April 13, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-1323

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-1323

██████████ **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 April 6, 2023, on a timely appeal filed March 1, 2023.

The matter before the Hearing Officer arises from the February 13, 2023 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 ██████████. The Appellant appeared pro se. Appearing as witnesses were ██████████ the Appellant's parents. 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 February 13, 2023
- D-3 Independent Psychological Evaluation (IPE)
Evaluation date: February 2, 2023

- D-4 After Visit Summary, dated September 12, 2022
- D-5 Letter from [REDACTED], MD, dated November 2, 2020
- D-6 Initial Therapy Visit, dated August 5, 2022
- D-7 i-Ready Math Diagnostic results (undated)
- D-8 Individualized Education Program (IEP)
[REDACTED] Schools
IEP Meeting Date: May 16, 2022
- D-9 [REDACTED] Schools IEP dated November 2, 2022
- D-10 IPE dated November 16, 2022
- D-11 Notice of Decision, dated December 20, 2022
- D-12 IPE dated September 16, 2020
- D-13 Notice of Decision, dated October 8, 2020
- D-14 Second Medical IPE dated November 17, 2020
- D-15 Notice of Decision, dated December 21, 2020

Appellant's Exhibits:

- A-1 (none)
- A-2 Bureau for Medical Services Provider Manual (excerpt)
Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)
§§ 513.6.2.1 – 513.6.3.1
- A-3 Excerpt of an external definition of “requiring substantial support”
- A-4 Excerpt of an external definition of “severe disability”
- A-5 IPE dated September 16, 2020
- A-6 Letter from [REDACTED], MD, dated November 2, 2020
- A-7 Second Medical IPE dated November 17, 2020
- A-8 Initial Therapy Visit, dated August 5, 2022

- A-9 IPE dated November 16, 2022
- A-10 IPE dated February 2, 2023
- A-11 IEP dated May 16, 2022
- A-12 i-Ready Math Diagnostic results (undated)

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 notices dated October 8, 2020 (Exhibit D-13), December 21, 2020 (Exhibit D-15), December 20, 2022 (Exhibit D-11), and February 13, 2023 (Exhibit D-2).
- 5) The February 2023 notice (Exhibit D-2) provided the basis for denial as “Documentation provided for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe.”
- 6) Prior notices of denial (Exhibits D-11, D-13, and D-15) provided the lack of an eligible diagnosis as the basis for denial, with the October 2020 notice (Exhibit D-13) additionally indicating the lack of an established “...need for an ICF/IID level of care.”
- 7) The Appellant was evaluated in Independent Psychological Evaluations (IPEs) conducted on September 16, 2020 (Exhibit D-12), November 17, 2020 (Exhibit D-14), November 16, 2022 (Exhibit D-10), and February 2, 2023 (Exhibit D-3).
- 8) The September 2020 IPE (Exhibit D-12) did not provide a diagnosis of Intellectual Disability but provided a diagnosis of *Autism, Social Level 2, Requiring Substantial Support, Repetitive Level 2, Requiring Substantial Support*.

- 9) The November 2020 IPE (Exhibit D-14) did not provide a diagnosis of Intellectual Disability but provided a diagnosis of *Autism Spectrum Disorder requiring substantial support (level 2)*.
- 10) The November 2022 IPE (Exhibit D-10) did not provide a diagnosis of Intellectual Disability but provided a diagnosis of *Autism Spectrum Disorder, Level 2, Without Intellectual or Language Deficits*.
- 11) The February 2023 IPE (Exhibit D-3) did not provide a diagnosis of Intellectual Disability but provided a diagnosis of *Autism Spectrum Disorder, Level 1*.
- 12) The Appellant was administered the Wide Range Achievement Test-5 (WRAT-5) during the February 2023 (Exhibit D-3) evaluation.
- 13) Results from the WRAT-5 are converted into standard scores with a mean of 100 and a standard deviation of 15.
- 14) The Appellant's WRAT-5 results ranged from a low of 82 on Math Computation, to a high of 109 on Spelling. (Exhibit D-3)
- 15) The assessing psychologist noted, regarding the Appellant's WRAT-5 results on the February 2023 IPE (Exhibit D-3), "There is no indication that [Appellant] was under performing. [Appellant's] achievement falls between the 3rd to 7th grade level."
- 16) The Appellant was administered the Gilliam Autism Rating Scale – Third Edition (GARS-3), during the February 2023 (Exhibit D-3) evaluation, and obtained an index score of 97.
- 17) The evaluating psychologist noted, regarding, the Appellant's GARS-3 results (Exhibit D-3), "[Appellant] is likely to be on the autism spectrum and to require support. [Appellant's] presentation and symptoms were consistent with Level 1 autism."
- 18) The Appellant's needs in the school system were assessed in IEPs from [REDACTED] Schools developed on May 16, 2022 (Exhibit D-8), and November 2, 2022 (Exhibit D-9).
- 19) The Appellant's May 2022 IEP (Exhibit D-8) determined the amount of time the Appellant would spend in a general education environment at 93%, and the remaining 7% of the Appellant's school time would be spent in a special education environment.
- 20) The Appellant's November 2022 IEP (Exhibit D-9) determined the Appellant would spend 100% of his school time in a general education environment.

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 his current application, as well as documents from a 2020 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. Autism or Autism Spectrum Disorder is a potentially eligible diagnosis, if the related condition “constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.”

Testimony from Ms. Linton indicated that Autism or Autism Spectrum Disorder must be diagnosed at a Level 3 to be an eligible diagnosis. The parents of the Appellant contended that Respondent policy does not explicitly require Autism or Autism Spectrum Disorder to be diagnosed at a Level 3 to be an eligible diagnosis. The levels associated with Autism or Autism Spectrum Disorder diagnoses increase with the severity of the diagnosis, with Level 3 being the most severe. Level 3, therefore, clearly aligns with the policy requirement for a ‘severe and chronic disability,’ with Levels 2 and 1 not being the most severe category. Although the Appellant obtained past diagnoses of Autism or Autism Spectrum Disorder at Level 2, his most recent IPE awarded a diagnosis at Level 1.

Testimony from the Appellant’s parents reflected the Appellant’s difficulties and explained that the Appellant requires support. School records showed the Appellant went from being primarily in a general education setting at school to being entirely in a general education setting. These

records not only show the improvement suggested by the level reduction in the Appellant's Autism or Autism Spectrum Disorder diagnosis, but also that the Appellant does not have a related condition which is severe.

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 April 2023.

Todd Thornton
State Hearing Officer