



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 10, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-1426

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, WVDHHR
Kerri Linton, PC&A
Janice Brown, KEPRO

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 23-BOR-1426

**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 May 3, 2023.

The matter before the Hearing Officer arises from the February 16, 2023 decision by the Respondent to deny I/DD Waiver Medicaid benefits.

At the hearing, the Respondent appeared by Kerri Linton, Licensed Psychologist and Long-Term Care Clinical Consultant for the Bureau for Medical Services. The Appellant was represented by her mother, █. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Chapter 513.6
- D-2 Notice of Decision dated February 16, 2023
- D-3 Independent Psychological Evaluation dated February 13, 2023, and test score reports
- D-4 █ Schools Student Assistance Team Report dated September 8, 2022
- D-5 █ Schools Student Assistance Team Report dated January 6, 2023
- D-6 Notice of Individual Evaluation/Reevaluation Request dated January 6, 2023
- D-7 █ Schools Student Assistance Team Referral Initiation Form

- D-8 i-Ready Diagnostic Results dated February 3, 2023
- D-9 Next Generation Family Medicine medical records dated January 17, 2023

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, who is currently 10 years of age, applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.
- 2) The Respondent sent the Appellant a Notice of Decision on February 16, 2023, indicating that her I/DD Waiver Program application was denied (Exhibit D-2).
- 3) The Appellant's application was denied because documentation submitted for review did not indicate an eligible program diagnosis of either intellectual disability or a severe related condition (Exhibit D-2).
- 4) An Independent Psychological Evaluation (IPE) was completed for the Appellant on February 13, 2023 (Exhibit D-3).
- 5) The Respondent considers scores of 55 and below as eligible I/DD Waiver Program scores on the Weschler Intelligence Scale for Children, Fifth Edition (WISC-V) testing instrument. Scores of 69 and below meet the threshold for intellectual disability.
- 6) The Appellant attained the following scores on the WISC-V: Verbal Comprehension Index, 70; Visual Spatial Index, 84; Fluid Reasoning Index, 79; Working Memory Index, 74; Processing Speed Index, 80; and Full Scale IQ, 70 (Exhibit D-3).
- 7) The Appellant was diagnosed with borderline intellectual functioning on the IPE, as well as "other Specified Neurodevelopmental Disorder, possible genetic disorder with symptoms of autism and ADHD" (Exhibit D-3).
- 8) The Appellant received reading, spelling and math scores ranging from 55 to 65 on the Wide Range Achievement Test (WRAT-5) issued in conjunction with the IPE (Exhibit D-3).
- 9) The Appellant received an autism index score of 121 on the Gilliam Autism Rating Scale-Third Edition (GARS-3). The psychologist noted that the scores indicated a higher severity level than would be expected. The psychologist did not diagnose the Appellant with an autism spectrum disorder (Exhibit D-3).

- 10) The Appellant exhibits significant deficiencies in reading and is “very good with technology” (Exhibits D-4 and D-7).
- 11) The Appellant receives Title I reading and math intervention at school (Exhibit D-5).
- 12) The Appellant is having difficulty in fourth grade and does not keep pace with her same age peers (Exhibit D-7).
- 13) The Appellant is below grade levels in many academic areas (Exhibit D-8).
- 14) On January 17, 2023, the Appellant was diagnosed with disruptive behavior disorder and conduct disorder, which are reflective of mental health conditions. The Appellant was also noted to have an attention and concentration deficit (Exhibit D-9).

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6 (Exhibit D-1) state:

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 may, if severe and chronic in nature, 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 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 the 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*.

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 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc., if requested by the IP for review.

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

To qualify for the I/DD Waiver Medicaid Program, policy dictates that an 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.

The Respondent's representative, Kerri Linton, Licensed Psychologist, testified that the Appellant's test scores reveal that she struggles academically; however, the Appellant's IQ score indicates that the difficulties are not due to an intellectual disability. She indicated that academic struggles alone do not constitute a need for an institutional level of care.

The Appellant's mother, [REDACTED], testified that the Appellant has been waiting for autism spectrum disorder testing, but the testing has been delayed. [REDACTED] stated that she knows her daughter has some type of disability, but is unsure about the diagnosis. She stated that the Appellant chews on chairs and urinates on herself. The Appellant has been placed into special classes so that she can receive additional assistance at school.

Information provided during the hearing does not reflect a diagnosis of severe and chronic intellectual disability or a related condition. Therefore, the Respondent's decision to deny I/DD Waiver benefits is affirmed.

CONCLUSIONS OF LAW

- 1) Policy states that an I/DD Waiver Medicaid applicant must have a diagnosis of intellectual disability or a related condition that constitutes a severe and chronic disability.
- 2) Evidence provided during the hearing fails to establish that the Appellant has been diagnosed with intellectual disability or a related condition.
- 3) The Respondent's decision to deny I/DD Medicaid Waiver benefits based on medical ineligibility is correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny I/DD Waiver Medicaid benefits.

ENTERED this 10th day of May 2023.

Pamela L. Hinzman
State Hearing Officer