



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

June 21, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 23-BOR-1800

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services, PC&A

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

██████████,

**Appellant,**

v.

**Action Number: 23-BOR-1800**

**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 ██████████. 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 June 14, 2023, on an appeal filed May 4, 2023.

The matter before the Hearing Officer arises from the April 20, 2023, decision by the Respondent to deny the Appellant's application for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his mother, ██████████. 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
- D-2 Notice of Denial dated April 20, 2023
- D-3 Independent Psychological Evaluation (IPE) dated February 18, 2023
- D-4 IPE dated August 12, 2019
- D-5 Notice of Denial dated September 3, 2019
- D-6 IPE dated September 18, 2019
- D-7 Notice of Denial dated October 16, 2019
- D-8 IPE dated July 29, 2020
- D-9 Notice of Denial dated August 24, 2020
- D-10 IPE dated September 14 and November 8, 2020
- D-11 Notice of Denial dated November 18, 2020

- D-12 IPE dated January 18 and 30, 2012 and February 7 and 14, 2012
- D-13 Notice of Denial dated February 29, 2012
- D-14 Individualized Education Program dated April 27, 1999
- D-15 Psychological Evaluation dated May 28, 2014

**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 applied for services under the I/DD Waiver Program.
- 2) A psychological evaluation was conducted with the Appellant on February 18, 2023, in conjunction with the I/DD Waiver application. The Appellant was diagnosed with a mild Intellectual Disability, Schizophrenia and 12Q 24.33 chromosome microdeletion disorder (Exhibit D-3).
- 3) The Respondent issued a notice of denial on April 20, 2023, advising that the Appellant's application had been denied as the documentation submitted does not indicate an eligible diagnosis of Intellectual Disability or a related condition which is severe prior to the age of 22. Additionally, the Appellant has an established major mental illness which is specifically excluded by policy (Exhibit D-2).
- 4) A psychological evaluation administered to the Appellant when he was 8 years old determined his full-scale Intelligence Quotient (IQ) as 80 (Exhibits D-12 and D-15).
- 5) In 1993, at the age of 12, the Appellant was admitted to a psychiatric facility (Exhibits D-12 and D-15).
- 6) In 1997, during the Appellant's sophomore year in high school, a psychological evaluation administered through the school system determined the Appellant's full-scale IQ as 74 (Exhibit D-15).

**APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver 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.

### **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 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 Disability 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 disability.

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**

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 75<sup>th</sup> 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.

### **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**

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application for I/DD Waiver services because the documentation failed to establish the presence of a severe Intellectual Disability, or related condition, that was present during the developmental period. Linda Workman, consulting psychologist for the Respondent, testified that the Appellant has had several I/DD Waiver applications over the years, and the most recent denial was not due to the February 2023 IPE. Ms. Workman stated that there is no record that the Appellant had an Intellectual or Developmental Disability prior to age 22. Ms. Workman noted that at the age of 8, the Appellant's IQ was 80, in the borderline range of intellectual functioning, which does not meet the severity criteria for I/DD Waiver services.

Ms. Workman referred to the Appellant's multiple psychiatric hospitalizations, his first at the age of 12. Ms. Workman opined that the Appellant's documented decrease in functioning is due to mental illness that was present during the developmental period, and not Intellectual Disability. Although the Appellant's rare genetic chromosomal disorder can be attributed to developmental delays, Ms. Workman stated there is no evidence that the Appellant presented with developmental delays prior to age 22.

The Appellant's mother, [REDACTED] testified that the Appellant's geneticist from the [REDACTED] advised that additional research regarding the Appellant's chromosomal disorder found a connection to an increased risk of Schizophrenia and believes that this disorder is the cause of the Appellant's cognitive and mental health issues. [REDACTED] stated that the Appellant has been awarded Social Security Disability benefits, retroactive to age 26 months. [REDACTED] contended that the Appellant's chromosomal disorder, which would have been present at birth, qualifies him for the I/DD Waiver Program.

Policy states any condition, other than mental illness, found to be closely related to Intellectual Disability, can potentially be an eligible diagnosis for the I/DD Waiver Program if 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 disability. However, there is no evidence that the Appellant's chromosomal disorder caused developmental delays or cognitive impairment during the developmental period. The documentation that was provided supported that mental illness, which is specifically excluded as an eligible related condition, has caused the Appellant's decline throughout adulthood.

Whereas the evidence failed to establish that the Appellant had an Intellectual Disability, or related condition, present prior to the age of 22, the Respondent's decision to deny the Appellant services under the I/DD Waiver Program is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22. Policy specifically excludes mental illness as an eligible diagnosis.
- 2) The evidence failed to demonstrate that the Appellant had an Intellectual Disability, or related condition, that was severe and resulted in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons and required services similar to those required for persons with intellectual disability prior to age 22.
- 3) The Appellant has received treatment for mental illness since childhood.
- 4) The Appellant does not meet the diagnostic criteria for I/DD Waiver services.

**DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for services under the I/DD Waiver Program.

**ENTERED this 21<sup>st</sup> day of June 2023.**

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**Kristi Logan**  
**Certified State Hearing Officer**