



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review

Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary

Sheila Lee  
Interim Inspector General

July 26, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 23-BOR-1919

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**

■■■■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 23-BOR-1919**

**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 July 13, 2023, on an appeal filed June 5, 2023.

The matter before the Hearing Officer arises from the April 3, 2023, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her 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
- D-2 Notice of Denial dated April 3, 2023
- D-3 Independent Psychological Evaluation dated March 23, 2023
- D-4 Correspondence from ■■■■ M.D. dated February 22, 2023
- D-5 Correspondence from ■■■■ Ph.D. dated February 28, 2023
- D-6 Correspondence from ■■■■ Division of Rehabilitation Services dated March 30, 2023
- D-7 Neuropsychological Report dated October 29, 2018
- D-8 Neuropsychological Evaluation dated August 20, 2020
- D-9 Achievement Evaluation Report dated November 18, 2020
- D-10 Psychoeducational Report dated January 8, 2021

- D-11 Neuropsychological Evaluation dated June 23, 2022
- D-12 Individualized Education Program dated January 17, 2023

**Appellant’s Exhibits:**

- A-1 Written Argument and Photographs

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 March 23, 2023, in conjunction with the I/DD Waiver application. The Appellant was diagnosed with Autism Spectrum Disorder - Level 2, Other Neurodevelopmental Disorder - Slow Processing Speed and Anxiety Disorder (Exhibit D-3).
- 3) The Respondent issued a notice of denial on April 3, 2023, advising that the Appellant’s application had been denied as the documentation submitted does not support the presence of an eligible diagnosis of Intellectual Disability or a related condition which is severe. Further, the documentation submitted does not support the need for an ICF/IID level of care (Exhibit D-2).

**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 as she did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Appellant was diagnosed with Autism Spectrum Disorder, Level 2. The Respondent's witness, Charley Bowen, testified that a rating of Level 2 does not meet the severity criteria for a related condition. The Appellant was administered the Weschler Adult Intelligence Scale (WAIS) during the March 2023 psychological evaluation and received a Full-Scale Intelligence Quotient (IQ) score of 89, falling within the average range of intellectual functioning. Other psychological evaluations submitted with the Appellant's application documented similar IQ scores for the Appellant.

The Appellant's aunt, [REDACTED] testified that she received custody of the Appellant in 2019. [REDACTED] stated that the Appellant exhibits unusual behaviors, the cause of which has not been determined. The Appellant has Post-Traumatic Stress Disorder, Anxiety and has obsessive-compulsive tendencies. [REDACTED] stated the Appellant has difficulty completing school assignments due to her slow-processing speed and contended that she would be unable to live independently.

Whereas the Appellant did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability or a related condition that is severe, the Respondent's decision to deny the Appellant's application for services under the I/DD Waiver Program is affirmed.

## **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, which does not meet the severity criteria in policy.

- 3) The Appellant does not meet the diagnostic criteria for services under 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 services under the I/DD Waiver Program

**ENTERED this 26<sup>th</sup> day of July 2023.**

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