



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1027 N. Randolph Ave.  
Elkins, WV 26241

Jeffrey H. Coben, M.D.  
Interim Cabinet Secretary

Sheila Lee  
Interim Inspector General

January 11, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-2247

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, BMS, 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: 22-BOR-2247**

**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 January 4, 2023, on an appeal filed October 6, 2022.

The matter before the Hearing Officer arises from the August 11, 2022 decision by the Respondent to deny the Appellant's application for benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.

At the hearing, the Respondent appeared by Charley Bowen, Long-Term Care Consultant/Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was represented by her mother, █. Appearing as witnesses for the Appellant were █, the Appellant's aunt; █, the Appellant's aunt; and █, a family friend. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated August 11, 2022
- D-3 Independent Psychological Evaluation dated August 8, 2022
- D-4 Patient Health Summary from █ Medicine dated August 8, 2022
- D-5 █ County Schools Psychoeducational Evaluation dated September 8, 2010
- D-6 Educational Evaluation dated October 21, 2010
- D-7 █ Report dated September 9, 2010

- D-8 [REDACTED] County Schools Functional Behavior Assessment dated December 23, 2011
- D-9 Woodcock-Johnson III Normative Update Test of Achievement Score Report dated December 14, 2011
- D-10 [REDACTED] Report dated October 4, 2010
- D-11 [REDACTED] County Schools Behavior/Social Skills Report dated May 10, 2018
- D-12 Woodcock-Johnson IV Test of Achievement Score Report dated May 3, 2018
- D-13 Psycho-Educational Assessment Report dated April 9, 2018
- D-14 [REDACTED] County Schools Individualized Education Program Report dated October 19, 2021
- D-15 [REDACTED] Family Healthcare Report dated July 30, 2018
- D-16 [REDACTED] Family Healthcare Report dated October 31, 2019
- D-17 [REDACTED] Hospital Report dated June 27, 2014

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, currently age 17, applied for benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Program.
- 2) The Appellant was notified on August 11, 2022, that her I/DD Waiver application was denied based on failure to meet medical eligibility criteria (Exhibit D-2).
- 3) The Appellant has a potentially eligible program diagnosis of mild intellectual disability (Exhibit D-3).
- 4) The Appellant displays no substantial functional deficits in the major life areas of *Self-Care, Learning, Self-Direction, Receptive or Expressive Language, Mobility, or Capacity for Independent Living* (Exhibit D-2).
- 5) The Appellant can complete bathing, dressing and grooming activities independently, but requires verbal prompting. She can heat items in a microwave oven, but cannot use a stove. She is unable to cut food with a knife for fear of cutting herself (functional area of *Self-Care*) (Exhibit D-3).
- 6) The Appellant communicates verbally without the use of an assistive device (functional area of *Receptive or Expressive Language*) (Exhibit D-3).
- 7) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).

- 8) The Appellant can make simple choices if given two items. She enjoys playing video games and likes to hit a volleyball. She does not like changes in routine and has poor persistence with difficult activities (functional area of *Self-Direction*) (Exhibit D-3).
- 9) The functional area of *Capacity for Independent Living* includes six subdomains: *home living, social skills, employment, health and safety, community use, and leisure activities* (Exhibit D-1).
- 10) The Appellant assists her mother with laundry, helps load the dishwasher, and cleans her room. The Appellant has friends at school (but can be easily manipulated) and can communicate if she is ill or in pain. She is unable to use community resources (Exhibit D-3).
- 11) Scores of 1 or 2 are required to establish I/DD Waiver medical eligibility on the Adaptive Behavior Assessment Scale-3<sup>rd</sup> Edition (ABAS-3) (Exhibit D-3).
- 12) The Appellant received program ineligible ABAS-3 scores of 5 in Communication (*Receptive or Expressive Language*); 3 in Functional Academics (*Learning*); 7 in *Self-Care*; and 5 in *Self-Direction* when tested during an Independent Psychological Evaluation (IPE) completed on August 8, 2022. In the functional area of *Capacity for Independent Living*, the Appellant received ineligible ABAS-3 scores of 6 in *home living*, 4 in *health and safety*, 5 in *leisure*, and 6 in *social*. She received a program eligible score of 1 in the subdomain of *community use* (Exhibit D-3).
- 13) Standard scores of 55 and below are required on the Wide Range Achievement Test 5 (WRAT 5) to establish substantial functional deficits in *Learning*. The Appellant received standard scores of 74 in word reading, 72 in spelling, 65 in math computation, 72 in sentence comprehension, and 71 in reading composite on the WRAT 5 completed during the August 8, 2022 IPE (Exhibit D-3).
- 14) Both ABAS II Teacher and Parent Ratings were obtained for the Appellant during a ██████████ County Schools Psychoeducational Evaluation completed on September 8, 2010, when the Appellant was age five. The Appellant received no eligible I/DD Waiver Program scores on the Teacher Rating and only one eligible score of 2 in Functional Academics on the Parent Rating (Exhibit D-5).
- 15) An Educational Evaluation completed for the Appellant at ██████████ Elementary School on October 21, 2010, revealed a weakness in mathematics on the Woodcock-Johnson III Normative Update Tests of Achievement. The Appellant's basic reading skills standard score was within the superior range when compared to others of her age. Scores of 55 and below are needed to establish severe deficits in the tested areas, and the Appellant scored below 55 only in the areas of math reasoning and math fluency (Exhibit D-6).
- 16) The Appellant displayed no program eligible academic achievement standard scores on the Woodcock-Johnson III Normative Update Tests of Achievement completed on December 14, 2011, when the Appellant was age six (Exhibit D-9).

- 17) A BASC-3 test was administered to the Appellant on May 10, 2018, at age 13 as part of a ██████ County Schools Behavior/Social Skills Report. Scores of 15 and below suggest a substantial deficit in adaptive skills. The Appellant received an adaptive skills score of 41, which is within normal limits (Exhibit D-11).
- 18) The Appellant was administered the Woodcock-Johnson IV Tests of Achievement on May 3, 2018, at age 13. She received scores below 55 in two areas of mathematics and in sentence reading fluency. Scores for reading, broad reading, basic reading skills, academic skills, brief achievement, letter-word identification, spelling, passage comprehension, calculation, word attack, and sentence writing fluency were all above 55 (Exhibit D-12).
- 19) A ██████ County Schools Individualized Education Program report dated October 19, 2021, indicates that the Appellant had no communication needs (Exhibit D-14)

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6.2.1 (Exhibit D-1) state:

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 75<sup>th</sup> 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 establish medical eligibility for participation in the I/DD Waiver Medicaid Program, an individual must meet the diagnostic, functionality, and need for active treatment criteria. 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.

While the Appellant met diagnostic criteria for the I/DD Waiver Program, the Respondent's representative, Psychologist Charley Bowen, testified that no substantial deficits could be identified for the Appellant in the six major life areas. The Appellant has *Mobility*, has *Receptive or Expressive Language Skills*, can complete *Self-Care* tasks with prompting, and exhibits *Self-Direction*. While the Appellant has some identified deficiencies in mathematics, a substantial deficit in *Learning* was not supported by the documentation submitted for review. Test scores revealed a substantial deficit in one subdomain of *Capacity for Independent Living*, but deficits in three subdomains are needed to meet medical eligibility requirements in that functional area.

The Appellant's mother, [REDACTED], testified that her daughter would not perform daily self-care tasks without prompting. She stated that the Appellant has vision problems and has used a device in school for guidance. The Appellant would be unable to pay bills, go outside unaccompanied, or live independently. [REDACTED] testified that the Appellant requires constant supervision and is prone to anxiety and depression.

The Appellant's aunts and a family friend testified about the Appellant's challenges, and indicated that the Appellant could not live independently. The Appellant cannot use a stove, needs continual self-care reminders, and could not go to a store by herself. The Appellant has poor vision and suffers from anxiety.

While the Appellant's many challenges are noted, information provided during the hearing does not reveal the presence of substantial adaptive deficits supported by test scores and narrative documentation. The Appellant has *Mobility*, performs *Self-Care* tasks with prompting, has *Expressive or Receptive Language* skills, and exhibits *Self-Direction*. She received a program eligible score in *community use*; however, *community use* represents only one of six subdomains of *Capacity for Independent Living*. Historical documentation reveals that the Appellant has deficiencies in mathematics, but she received no program eligible WRAT 5 scores on the August 2022 IPE to establish a substantial deficit in *Learning*.

Based on information provided during the hearing, medical eligibility for the I/DD Waiver Program has not been established.

## CONCLUSIONS OF LAW

- 1) To establish medical eligibility for the I/DD Waiver Medicaid Program, an applicant must meet the diagnostic, functionality, and need for active treatment criteria.

- 2) 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.
- 3) While the Appellant's diagnostic information was not in question, documentation fails to establish that the Appellant demonstrates the substantial functional deficits required by I/DD Waiver Program policy.
- 4) As the Appellant does not meet medical eligibility criteria, the Respondent acted correctly in denying her application for the I/DD Waiver Medicaid Program.

### **DECISION**

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

**ENTERED this 11th of January, 2023.**

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**Pamela L. Hinzman  
State Hearing Officer**