



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF THE INSPECTOR GENERAL

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Board of Review  
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Sheila Lee  
Interim Inspector General

January 11, 2023



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 22-BOR-2433

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Decision Recourse  
Form IG-BR-29

CC: Stacy Broce, Bureau for Medical Services  
Janice Brown, KEPRO  
Kerri Linton, Psychological Consultation & Assessment

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**ACTION NO.: 22-BOR-2433**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on December 14, 2022 on an appeal filed with the Board of Review on November 7, 2022.

The matter before the Hearing Officer arises from the Respondent's October 27, 2022 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment. The Appellant appeared *pro se* by her guardian, ■, Child Protective Services Worker. Appearing as a witness on behalf of the Appellant was ■ Child Protective Services Supervisor. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual Chapter 513 Excerpts
- D-2 DHHR Notice, dated October 27, 2022
- D-3 Independent Psychological Evaluation (IPE), dated October 24, 2022
- D-4 ■ County Schools Eligibility Committee Report;  
Individualized Education Program (IEP), meeting date May 26, 2022
- D-5 ■ County Schools Reevaluation Determination Plan, dated May 13, 2021
- D-6 ■ Mental Health Assessment by Non-Physician
- D-7 ■ Progress Report

- D-8 [REDACTED] Psychological Evaluation, dated August 31, 2022  
D-9 [REDACTED] County Schools Psychological Evaluation, dated February 28, 2022  
D-10 [REDACTED] County Schools Psychological Evaluation, dated September 2019

**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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) On October 27, 2022, the Respondent issued a notice advising the Appellant that her application for Medicaid I/DD Waiver eligibility had been denied (Exhibit D-2).
- 2) The October 27, 2022 notice indicated that documentation failed to support the presence of substantial adaptive deficits in three or more of the six major life areas (Exhibit D-2).
- 3) The Appellant had substantial adaptive deficits in the areas of *learning* and *self-direction* (Exhibits D-2 through D-9).
- 4) The Appellant has an eligible diagnosis (Exhibits D-3 through D-9).
- 5) On October 24, 2022, an Independent Psychological Evaluation (IPE) was completed by licensed psychologist, [REDACTED] (Exhibit D-3).
- 6) On October 24, 2022, the Adaptive Behavior Assessment System 3rd-Edition (ABAS-3) was completed (Exhibit D-3).
- 7) ABAS-3 scores of three standard deviations below the mean are scaled scores of 1 or 2.
- 8) The October 24, 2022 ABAS-3 results reflected scores of 1 in the areas of *community use* (Exhibit D-3).
- 9) The October 24, 2022 ABAS-3 results reflected scores of 2 in the areas of *health and safety* (Exhibit D-3).
- 10) The Appellant is capable of physically performing self-care tasks independently with prompting (Exhibits D-3, D-6 through D-9).
- 11) The Appellant is capable of effectively communicating her wants and needs without the use of assistive devices (Exhibits D-3, D-6).
- 12) The Appellant is capable of mobility without use of mechanical aids (Exhibit D-3).

## APPLICABLE POLICY

### **Bureau for Medical Services (BMS) Manual § 513.6 provides in part:**

In order for an applicant to be found eligible for the I/DD Waiver Program, they must meet medical eligibility ... Medical eligibility is determined by the Medical Eligibility Contract Agent (MECA) through a review of the IPE completed by a member of the Independent Psychologist Network.

### **BMS Manual § 513.6.1.1 provides in part:**

The applicant chooses a psychologist in the Independent Psychologist Network (IPN) and contacts the IP to schedule the appointment .... The Independent Psychological Evaluation (IPE) is used to make a medical eligibility determination.

### **BMS Manual § 513.6.2 provides in part:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF institution level of care. The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and
- Requirement of ICF/IID Level of Care

### **BMS Manual § 513.6.2.2 provides in part:**

The applicant must have substantial deficits in at least three of the six identified major life areas:

- Self-care;
- Communication;
- Learning;
- Mobility;
- Self-direction; and
- Capacity for independent living ....

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 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 [emphasis added] be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

## DISCUSSION

The Respondent stipulated that the Appellant has an eligible diagnosis. The evidence demonstrated that the Appellant had substantial adaptive deficits in the areas of *learning* and *self-direction*. The Respondent determined that the submitted documentation supported the presence of only two substantial adaptive deficits; therefore, the Respondent denied the Appellant eligibility for the Medicaid I/DD Waiver Program.

The Respondent bears the burden of proof. To prove that the Respondent's denial was correct, the preponderance of evidence had to demonstrate that the submitted documentation failed to support the presence of three substantial deficits. To be eligible for the Medicaid I/DD Waiver Program, the policy requires the presence of substantial functioning deficits in at least three major life areas as evidenced by narrative descriptions and relevant test scores.

Adaptive Behavior Assessment scores had to reflect a score of 1 or 2 to constitute an eligible deficit area. The evidence revealed potentially eligible ABAS-3 scores on the ██████████ County Schools 2019 Psychological Evaluation. The Respondent's witness testified that the 2019 ABAS-3 reporting form was completed by a substitute teacher. Further, the Respondent testified that scaled scores from 2019 cannot be considered because they do not reflect the Appellant's abilities at the time of the October 24, 2022 IPE. Because the preponderance of evidence indicated that the 2019 ABAS-3 scores may be unreliable, they were given little weight in the decision of this Hearing Officer.

The Appellant's representative testified that the Appellant requires hand-over-hand assistance to complete self-care tasks. However, the policy stipulates that deficits in functioning areas are established by IPE functioning narrative and relevant test scores. The evidence narrative revealed that the Appellant is capable of physically performing self-care tasks independently with prompting. During the hearing, the Respondent's representative testified that an individual who meets severity criteria for this area requires hand-over-hand physical assistance to complete self-care tasks. The current ABAS-3 results reflect a scaled score of 3 in the area of *self-care*. Historic ABAS-3 scores failed to establish substantial deficits in the area of *self-care*.

The evidence narrative revealed that the Appellant is capable of effectively communicating her wants and needs without the use of assistive devices (Exhibit D-3). During the hearing, the Respondent's representative testified that an individual who meets severity criteria for this area is non-verbal, has very minimal verbal abilities, uses minimal sign language, or uses an augmented device to communicate. The current ABAS-3 results reflected a scaled score of 3 in the area of *communication*. Historic ABAS-3 scores failed to establish substantial deficits in the area of

*communication.*

The evidence narrative revealed that the Appellant is capable of mobility without use of mechanical aids (Exhibit D-3). During the hearing, the Respondent's representative testified that an individual who meets severity criteria for this area is wheelchair dependent, unable to independently transfer, and unable to independently self-propel.

To obtain a deficit for *capacity for independent living*, the IPE narrative and scores had to reflect deficits in at least three subdomains for this area. The evidence revealed that the Appellant had eligible ABAS-3 scores three standard deviations below the mean in two subdomains of *capacity for independent living*. Historic ABAS-3 scores failed to establish substantial deficits in the area of *capacity for independent living*.

### **CONCLUSIONS OF LAW**

- 1) To be determined medically eligible for the Medicaid I/DD Waiver Program, the Appellant must demonstrate substantial deficits in at least three of the six identified major life areas.
- 2) The Appellant demonstrated substantial deficits in the areas of *learning* and *self-direction*.
- 3) The preponderance of evidence failed to demonstrate the presence of substantial deficits in additional major life areas.
- 4) The Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 11<sup>th</sup> day of January 2023.

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**Tara B. Thompson, MLS**  
State Hearing Officer