



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

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Sheila Lee  
Interim Inspector General

January 25, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED PERSON v. WV DHHR  
ACTION NO.: 22-BOR-2456

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,

Lori Woodward, J.D.  
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 PERSON,

**Appellant,**

v.

**Action Number: 22-BOR-2456**

**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 PERSON. 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 18, 2023, on an appeal filed November 9, 2022.

The matter before the Hearing Officer arises from the October 20, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charlie Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by her father, █. Appearing as a witness for the Appellant was her 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 - 513.6.4
- D-2 Denial Notice, dated October 20, 2022
- D-3 Independent Psychological Evaluation (IPE) West Virginia I/DD Waiver, dated October 10, 2022
- D-4 █ Child Neurology Initial Clinic Visit dated December 7, 2021
- D-5 Telemedicine Visit dated September 27, 2021
- D-6 █ Children's Telemedicine Consult dated December 7, 2021
- D-7 █ Children's Telemedicine Consult dated June 21, 2022
- D-8 Telemedicine Visit dated April 11, 2022

**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 is a three year-old with 1q Partial Trisomy Syndrome (PTS) whose parents applied for services under the I/DD Waiver Program.
- 2) The Appellant underwent an Independent Psychological Evaluation (IPE) on October 10, 2022, as part of her I/DD Waiver Program application. (Exhibit D-3)
- 3) On October 20, 2022, the Respondent denied the Appellant's application and sent notification to the Appellant that the documentation submitted did not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe. (Exhibit D-2)
- 4) The Appellant has a diagnosis of Global Developmental Delay. (Exhibit D-2)

**APPLICABLE POLICY**

**Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility***, states: To be medically eligible, the applicant must require a level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID

The MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive IDDW 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.

**Bureau for Medical Services Provider Manual §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, if severe and chronic in nature, may make an individual eligible for the IDDW 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 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.

**Bureau for Medical Services Provider Manual §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.

### **Bureau for Medical Services Provider Manual §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**

The Appellant is a 3 year-old with a diagnosis of 1q Partial Trisomy Syndrome whose parents applied for I/DD Waiver services. As part of the I/DD waiver application, the Appellant underwent an IPE on October 10, 2022. The evaluating psychologist, [REDACTED], determined that the Appellant had Global Developmental Delay (GDD). On October 20, 2022, the Appellant's I/DD Waiver Program application was denied by the Respondent. The denial notice stated that the "Documentation submitted for review does not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe. Global Developmental Delay is not considered to be an eligible diagnosis. Likewise, Partial Trisomy 21 is not considered to be an eligible diagnosis." The Appellant's parents appealed the Respondent's decision averring that the Appellant's diagnosis of 1q Partial Trisomy Syndrome is characterized by intellectual disability.

Policy requires that medical eligibility criteria in each of the following categories be met in order to be eligible for the I/DD Waiver program: 1) *Diagnosis* of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) *Functionality* of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) *Active Treatment* - the need for active treatment, 4) *ICF/IID Level of Care* need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services.

The Respondent's representative, Charlie Bowen, evaluated the Appellant's I/DD Waiver Program application. Mr. Bowen found that the Appellant's diagnosis of GDD did not meet the diagnosis criteria for program eligibility. Additionally, he concluded that the documentation submitted with the application all confirmed a developmental delay which at this time does not meet the severity criteria for program eligibility. Mr. Bowen testified that because the Appellant did not meet the diagnosis criteria, the functionality criteria was not considered.

The Appellant's representative, [REDACTED], questioned the October 20, 2022 denial notice which referenced PTS 21, which is a different diagnosis from the Appellant's 1q PTS 42. Mr. Bowen acknowledged the incorrect diagnosis referenced on the denial notice. However, Mr. Bowen testified that he did study information on 1q PTS 42 and concluded that the Appellant's diagnosis did not qualify as a severe related condition at this time.

██████████ proffered that the Appellant's type of PTS is considered by the Center for Disease Control (CDC) to be characterized by intellectual disability and testified that the Appellant does show delays in many areas. The Appellant's parents testified that repetitive corrections must be made to the Appellant, she must be directed to activities and does not initiate them herself, she does not understand the consequences of her actions, and that she has issues with her hip which affect her walking. However, in reviewing the physician's notes for the Appellant's December 7, 2021 visit, the examining physician noted the Appellant's affect, judgment, memory, and mood were all age appropriate, in addition to walking and ambulating well. The examining physicians also noted the Appellant had developmental delay. On the physician's notes for the Appellant's June 21, 2022 visit, it was also noted that the appellant had developmental delay.

██████████ contends that the Appellant is delayed in all of the listed CDC areas for PTS and therefore, the Appellant should meet the diagnosis criteria for I/DD Waiver program eligibility. In reviewing the Appellant's IPE and neurological examinations, they all note that the Appellant has GDD, that is not in dispute. However, the submitted documentation does not indicate that the Appellant has an Intellectual Disability (ID) at this time that would require ICF/IID level of care. In reviewing the narrative in the October 10, 2022 IPE, the Appellant is noted to be able to take her parents to the refrigerator when she is hungry and is able to open and close the drawers once the refrigerator is opened; the Appellant can feed herself and assist in dressing; can spontaneously name about 20 items; can point to items when asked; can indicate her preference or choice for items; helps put toys away and assists her mother picking up toys; assists with feeding the dogs; and puts her dirty clothes in the hamper. Additionally, ██████████ testified that the Appellant has begun to learn some sign language.

Pursuant to policy, an individual must meet all four criteria (diagnosis, functionality, active treatment, and ICF/IID level of care) in order to be considered medically eligible for the I/DD Waiver Program. The Appellant does not meet the diagnosis criteria. The Respondent's decision to deny I/DD Waiver Program services is affirmed.

### **CONCLUSION OF LAW**

Whereas the Appellant does not meet the medical eligibility criteria for the I/DD Waiver Program set forth by policy, the Respondent must deny her application.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's I/DD Waiver Program application.

**ENTERED this 25<sup>th</sup> day of January 2023.**

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**Lori Woodward, Certified State Hearing Officer**