



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

Jolynn Marra
Interim Inspector General

September 13, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2036

Dear Ms. [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
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: [REDACTED], Psychological Consultation & Assessment, Inc.

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

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-2036

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on August 30, 2018, on an appeal filed July 24, 2018.

The matter before the Hearing Officer arises from the July 9, 2018 determination by the Respondent to deny the Appellant's renewal application for benefits through the Medicaid Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by ██████████, Licensed Psychologist for Psychological Consultation and Assessment, Inc. (PC&A). The Appellant was represented by his mother, ██████████. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 DHHR CDCSP Annual Renewal Application, dated May 10, 2018
- D-2 Independent Psychological Evaluation, dated May 22, 2018
- D-3 ██████████ County Schools Individualized Education Program (IEP), dated May 16, 2018
- D-4 ██████████ medical Center Speech Therapy Report, dated February 12, 2018

Appellant's Exhibits:

- A-1 Teacher Letter, undated
- A-2 Pediatric Rehabilitation Center Progress Note, dated June 29, 2018
- A-3 ██████████ Progress Note, dated April 17, 2018

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) The Appellant is a recipient of Medicaid CDCSP benefits.
- 2) On July 9, 2018, the Respondent issued a notice advising the Appellant that his renewal application for Medicaid CDCSP benefits had been denied due to the absence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/MR Eligibility.
- 3) The notice advised that the Appellant was found to demonstrate substantial limitations in the areas of *self-care* and *capacity for independent living*.
- 4) The notice advised that the Appellant failed to demonstrate substantial limitations in the areas of *learning*, *self-direction*, and *receptive or expressive language*.
- 5) The Appellant has a diagnosis of Autism Spectrum Disorder, Apraxia, and Attention Deficit Hyperactivity Disorder (ADHD). (Exhibits D-1 through D-4)
- 6) On May 22, 2018, an Adaptive Behavior Assessment System (ABAS-3) was conducted with the Appellant. (Exhibit D-2)
- 7) The ABAS-3 standard scores have a mean of 100 and a standard deviation of 15. The ABAS-3 scaled scores have a mean of 10 and standard deviation of 3. (Exhibit D-2)
- 8) The Appellant's ABAS-3 scaled scores ranged from 3 to 7. (Exhibit D-2)
- 9) The Appellant's ABAS-3 standard scores ranged from 64 to 77. (Exhibit D-2)
- 10) The Appellant's ABAS-3 percentage rank ranged from one 1 to 6. (Exhibit D-2)
- 11) The Appellant's May 16, 2018 Individual Education Program (IEP) relied on January 30, 2017 ABAS-3 results. (Exhibit D-3)
- 12) On February 12, 2018, the [REDACTED] conducted a Goldman-Fristoe test of articulation with the Appellant. (Exhibit D-4)

APPLICABLE POLICY

BMS Manual §526.1 Member Eligibility and Enrollment Process provides in part:

Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID): active treatment for individuals with intellectual disabilities and/or related conditions, such as autism, who require the type of active treatment typically provided by a facility whose primary purpose is to furnish health and habilitation services to persons with intellectual disabilities or related conditions.

BMS Manual §526.5.1 Medical Eligibility for ICF/IID Level of Care provides in part:

To be medically eligible, the child must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information and corroborated by narrative descriptions of functioning and reported history The child must meet the

medical eligibility criteria in this section and in each of the following sections of 526.5.2 to be eligible for this program. A new CDCDP-3 (Psychological Evaluation) must be submitted for redetermination of medical eligibility annually.

BMS Manual §526.5.2.2 Functionality for ICF/IID Level of Care provides in part:

The child must have substantial deficits in three (3) of the six major life areas:

- 1) Self-Care: basic activities such as age appropriate grooming, dressing, toileting, feeding, bathing, and simple meal preparation.
- 2) Understanding and use of language: age appropriate ability to communicate by any means whether verbal, nonverbal/gestures, or with assistive device.
- 3) Learning: age appropriate functional academics.
- 4) Mobility: age appropriate ability to move one's person from one place to another with or without mechanical aids.
- 5) Self-direction: age appropriate ability to make choices and initiate activities, the ability to choose an active lifestyle or remain passive, and the ability to engage in or demonstrate an interest in preferred activities.
- 6) Capacity for independent living: home living, social skills, employment, health and safety, community use, leisure activities.

Substantial deficits are defined as standardized scores of three (3) standard deviations below the mean or less than 1% ... 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 by not only the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review (i.e., psychological, the IEP, Occupational Therapy evaluation, narrative descriptions, etc.).

DISCUSSION

The Appellant submitted a renewal application for Medicaid CDCSP benefit eligibility. The Respondent issued a notice advising the Appellant that his renewal application for Medicaid CDCSP benefits had been denied because the documentation submitted with his renewal application did not demonstrate the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/MR Eligibility. The Respondent testified that due to ABAS-3 scores demonstrating minimal improvement since the previous year, substantial adaptive deficits were awarded to the Appellant in the areas of *self-care* and *capacity for independent living*. The Appellant argued that the Appellant should have received additional deficits in the areas of *learning*, *self-direction*, and *receptive or expressive language*.

The Respondent had to prove that the Appellant should not have been awarded additional deficits in the areas of *learning*, *self-direction*, or *receptive or expressive language*.

To meet the policy definition of substantial deficits, the Appellant's adaptive scores had to be 3 standard deviations below the mean, or less than 1%. The May 22, 2018 psychological evaluation reflected that an ABAS-3 had been completed with the Appellant. Pursuant to policy, the Appellant's ABAS-3 standard scores had to equal 55 or scaled scores had to equal 1 or 2. The Appellant's adaptive behavior scores did not fall within the policy guidelines.

Evidence was presented during the hearing that demonstrated narrative descriptions of the Appellant's deficits; however, no additional evidence was presented to corroborate the narrative with scores from an

appropriate standardized test for measuring adaptive behavior. The Goldman-Fristoe test of articulation is not a standardized test for measuring adaptive behaviors; therefore, the Goldman-Fristoe test results were not considered in the decision of this Hearing Officer.

The preponderance of evidence did not demonstrate that the Appellant presented with substantial deficits in the areas of *learning*, *self-direction*, or *receptive or expressive language*. The Respondent was correct to deny the Appellant's renewal application for Medicaid CDCSP benefits.

CONCLUSIONS OF LAW

- 1) The Appellant must have substantial deficits in three (3) of the six (6) major life areas to be medically eligible for Medicaid CDCSP benefits.
- 2) The Appellant demonstrated substantial deficits in *self-care* and *capacity for independent living*.
- 3) Because the Appellant did not present with substantial deficits in three (3) major life areas, medical eligibility could not be established.
- 4) The Respondent acted correctly to deny the Appellant's renewal application for Medicaid CDCSP benefits.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's denial of the Appellant's renewal application for Medicaid CDCSP services.

ENTERED this 13th day of September 2018.

Tara B. Thompson
State Hearing Officer