



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 29, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1226

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 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,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Taniua Hardy, Department Representative

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1226

**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' Common Chapters Manual. This fair hearing was convened on March 22, 2015, on an appeal filed February 2, 2015.

The matter before the Hearing Officer arises from the September 22, 2014 decision by the Respondent to deny the Claimant's eligibility for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ██████████, ██████████. ██████████ The Claimant appeared in person and was represented by his sister and Medical Power of Attorney (POA), ██████████. Appearing as a witness for the Claimant was the Claimant's sister, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

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| D-1 | Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.3 |
| D-2 | Correspondence from the Department to the Claimant, dated September 22, 2014 |
| D-3 | Independent Psychological Evaluation (IPE), dated September 10, 2014 |
| D-4 | Medical Records from ██████████), dated March 19, 2012 |
| D-5 | Report of Consultation, ██████████, M.D., dated March 20, 2012 |
| D-6 | Medical Records from ██████████ dated March 20, 2012 |

- D-7 Medical Records from [REDACTED] dated March 21, 2012
D-8 Medical Records from [REDACTED], M.D., dated July 14, 2009
D-9 Progress Notes from [REDACTED], dated May 9, 2002
D-10 Progress Notes from [REDACTED], M.D., dated March 19, 2001

Claimant's Exhibits:

- C-1 Medical Records submitted via facsimile on April 15, 2015

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 Claimant applied for I/DD Waiver Program services and the Respondent issued a September 22, 2014 notice to the Claimant denying this application. The reason for denial was "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility." (Exhibit D-2)
- 2) The Claimant established the presence of substantial adaptive deficits in two major life areas identified for program eligibility: Learning and the Capacity for Independent Living. (Exhibit D-2)
- 3) [REDACTED] (Ms. [REDACTED] representative for the Respondent, testified that she is a licensed psychologist employed by [REDACTED] ([REDACTED]), a firm contracted by the Respondent to make eligibility determinations for the I/DD Waiver Program. Ms. [REDACTED] made the eligibility determination regarding the Claimant, and based her information on the Claimant's Independent Psychological Evaluation (IPE) and medical records and reports received from [REDACTED] and [REDACTED], M.D. (Exhibits D-2 through D-10).
- 4) The Claimant's IPE (Exhibit D-3) includes the results of The Adaptive Behavior Assessment System – Second Edition (ABAS-II). The ABAS-II is a test instrument used to "assess cognitive and developmental disabilities with adaptive behavior rating scales." Standard scores on this instrument have a mean of ten (10) and a standard deviation of three (3). For the purpose of establishing "substantial deficits," a standard score of one (1) is three (3) standard deviations below the mean. A standard score of two (2) includes results from the sample that are "less than one percentile." The Claimant received standard scores of one (1) or two (2) on the ABAS-II in the skill areas of Community Use, Functional Academics, Home Living and Social. The skill areas of Community Use, Home Living and Social correspond with the subdomains of the

“major life area” for the Capacity for Independent Living. The skill area of Functional Academics corresponds with the “major life area” of Learning.

- 5) The Claimant’s representative and witness testified that the Claimant has to be assisted with self-care tasks such as bathing and brushing his teeth and that he has mobility issues (falling more often) because his condition is deteriorating rapidly. The Claimant’s witness stated that the Claimant can echo and repeat what is said to him, but does not have an understanding of what he is saying and that his responses are not consistent. The Claimant’s representative added that the Claimant’s legal guardian is 83 years of age and she and her sister are concerned that he is no longer able to care for the Claimant. They are concerned about the Claimant’s welfare and desire to get him the help that he needs.
- 6) Ms. [REDACTED] reported that with regard to the “major life area” of mobility, an individual must be wheelchair bound in order to be considered a substantial deficit. The Claimant’s representative testified that a wheelchair has been ordered for the Claimant. She added that the Claimant is not currently wheelchair bound, but could be soon due to the rapid deterioration in his condition.

APPLICABLE POLICY

The policy regarding the functionality component of medical eligibility for the I/DD Waiver Program is located in Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.3.2.2. This policy reads as follows:

513.3.2.2 Functionality

The applicant must have substantial deficits in at least 3 of the 6 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 6 sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, 3 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 3 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 percentile when derived from MR normative populations when mental retardation 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.

DISCUSSION

The Respondent denied the Claimant's application for the I/DD Waiver Program based on unmet medical eligibility. The unmet medical eligibility component noted on the denial notice was functionality. The policy regarding functionality relies on the concept of "substantial deficits," and defines this concept strictly in terms of test scores "derived from a standardized measure of adaptive behavior," and the Claimant did not establish eligibility on this basis. Narrative descriptions in evidence or testimony may not substitute for lacking eligible test scores; they can only support existing eligible results.

The testimony and evidence presented on the Claimant's behalf failed to establish that the validity of the test scores obtained on the ABAS-II were inaccurate. In fact, the information used to assess the Claimant was provided by the Claimant's sister when the assessment was conducted. With the regard to the issue of mobility, while testimony indicated that the Claimant's condition is deteriorating, it does not rise to the level required to be considered a substantial deficit for the I/DD Waiver Program. The decision of the Respondent to deny the Claimant's application for the I/DD Waiver Program was correct.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires the demonstration of substantial deficits in at least three major life areas (also identified by policy). Because the Claimant only demonstrated substantial deficits two major life areas, the functionality component could not be established.
- 2) Because the functionality component could not be established, medical eligibility for the program could not be established and the Claimant's application must be denied.

DECISION

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

ENTERED this ____ Day of April 2015.

Donna L. Toler
State Hearing Officer