



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

May 28, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-1496

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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS

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

██████████,

**Appellant**

v.

**Action Number: 15-BOR-1496**

**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 May 27, 2015, on an appeal filed March 6, 2015.

The matter before the Hearing Officer arises from the January 28, 2015 decision by the Respondent to deny Appellant's application for the Medicaid Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, a psychologist consultant for Respondent's Bureau for Medical Services. The Appellant was represented by ██████████ a Youth Services Worker for the WVDHHR. Appearing as witnesses for the Appellant were ██████████ Youth Services Supervisor, WVDHHR; ██████████, Service Coordinator, ██████████; and ██████████, Therapeutic Consultant, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of denial dated 1/28/15
- D-2 Independent Psychological Evaluation (IPE) completed on 12/30/14
- D-3 Correspondence from ██████████ dated 11/20/14 – Diagnosis Report from date of placement on 8/28/14
- D-4 Psychological Evaluation – date of report 4/11/07
- D-5 Diagnosis Report from ██████████ – start date 8/28/14
- D-6 Physician Discharge Orders dated 8/25/14

- D-7 [REDACTED] – Initial Psychiatric Evaluation dated 8/22/13
- D-8 [REDACTED] – Clinical Discharge Summary dated 8/28/14
- D-9 Individualized Education Program (IEP) dated 10/23/14
- D-10 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.3.2, Initial Medical Eligibility

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) On January 28, 2015, Appellant was notified that her application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates that the documentation submitted neither supports the presence of a severe intellectual disability, nor substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for Waiver eligibility. A substantial adaptive deficit was identified in capacity for independent living; however, deficits could not be identified in any of the other five (5) major life areas (learning, self-care, receptive or expressive language, mobility or self-direction).
- 2) Appellant has a potentially eligible diagnosis of Mild Mental Retardation (MMR); however, the clinical documentation submitted for review fails to demonstrate that her condition is severe. This finding is supported by the fact that while the Appellant's current evaluation includes a MMR diagnosis, MMR has not been consistently provided as an Axis II diagnosis in previous evaluations. In addition, the Appellant was provided special education services in the public school setting based on her Attention Deficit Hyper Activity Disorder (ADHD), and she participated in the general education classroom setting 100 percent of the time. The evidence further demonstrates that the Appellant's treatment goals and services have historically been geared toward the treatment of behavioral issues related to her Axis I diagnoses.
- 3) The evidence further confirms the Appellant is not demonstrating substantial adaptive deficits in at least three (3) of the six (6) major life areas. Respondent stipulated that the Appellant is demonstrating a substantial adaptive deficit in the major life area of capacity for independent living; however, no other deficits were identified. This finding is confirmed in the psychometric data found in the Appellant's current Independent Psychological Evaluation (D-2), as well as supportive narrative documentation. Therefore, clinical documentation does not support the need for active treatment.

- 4) Appellant's representatives contended that the Appellant's mild intellectual disability is prohibiting her from living independently; however, no other substantial adaptive deficits (self-care, receptive or expressive language, learning, mobility or self-direction) were contested.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.1 (Initial Medical Eligibility), provides that the applicant must have a diagnosis of mental retardation with concurrent substantial deficits manifested prior to the age of 22, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.2 (Functionality), states that an individual who applies for I/DD Waiver Services must substantiate the presence of substantial adaptive deficits in three out of six major life areas - self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. 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. 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.

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.3 (Active Treatment), indicates that 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**

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria. While the Appellant potentially meets the diagnostic criteria, functionality criteria is only met when clinical documentation confirms the individual is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas. A review of the evidence submitted at the hearing reveals the Appellant is demonstrating only one (1) substantial adaptive deficit (capacity for independent living) in the major life areas. As a result, medical eligibility for participation in the I/DD Waiver Program cannot be established.

### **CONCLUSIONS OF LAW**

The evidence submitted at the hearing demonstrates the Appellant does not meet the medical eligibility criteria required for participation in the Medicaid I/DD Waiver Program.

### **DECISION**

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

**ENTERED this \_\_\_\_ Day of May 2015.**

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**Thomas E. Arnett  
State Hearing Officer**