



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661
(304) 235-4680

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 12, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1576

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Taniua R. Hardy, WV Bureau for Medical Services
APS Healthcare, Charleston, WV

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1576

**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 21, 2015, on an appeal filed March 17, 2015.

The matter before the Hearing Officer arises from the March 9, 2015 decision by the Respondent to discontinue the Appellant's eligibility for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by Representative ██████████ psychological consultant to the WV DHHR, Bureau for Medical Services. The Appellant appeared *pro se*, by his Representative and mother ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.4, Member Annual Re-Determination of Eligibility Process
- D-2 Letter of Termination from the I/DD Waiver Program, dated March 9, 2015
- D-3 Independent Psychological Evaluation from Psychological Assessment and Intervention Services, ██████████, MA, evaluation date February 3, 2015
- D-4 Letter of Termination from the I/DD Waiver Program, dated December 24, 2014
- D-5 Inventory for Client and Agency Planning (ICAP), dated December 10, 2014
- D-6 Adaptive Behavior Assessment System – Second Edition (ABAS II) Report – Results of the ABAS II, administered on December 10, 2014

Appellant's Exhibits

- A-1 DD-2A (Annual Medical Evaluation) from the [REDACTED], dated January 22, 2015
- A-2 Individualized Education Program (IEP) from [REDACTED], dated March 26, 2014
- A-3 IEP Annual Goals from [REDACTED], dated March 26, 2014
- A-4 IEP Team Meeting Notices from [REDACTED]
- A-5 WV I/DD Waiver Individualized Program Plan (IPP), signed by Appellant's Therapeutic Consultant on August 28, 2014
- A-6 Crisis Response Plan from the [REDACTED], dated August 28, 2014

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 WV Department of Health and Human Resources (herein the Department) conducted a yearly review of the Appellant's participation in the Title XIX I/DD Waiver Program. As a result of this review, the Department determined the Appellant no longer was medically eligible for the program, and issued a termination letter (Exhibit D-4) to his parents on December 24, 2014.
- 2) The Appellant's parents requested a reconsideration of the denial, with a second medical evaluation and an independent psychological evaluation. A physician at the [REDACTED] performed the second medical evaluation on January 22, 2015 (Exhibit A-1). [REDACTED], performed the independent psychological evaluation (Exhibit D-3) on February 3, 2015.
- 3) The Department issued a second notice of termination to the Appellant's parents on March 9, 2015 (Exhibit D-2). The reconsideration was denied because there was no eligible diagnosis of intellectual disability or a related condition which was considered to be severe, and the documentation failed to demonstrate substantial limitations in any of the major life areas of self-care, receptive or expressive language, learning, mobility, self-direction, or the capacity for independent living.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – *Member Annual Re-Determination of Eligibility Process*, §513.4 (Exhibit D-1), reads as follows regarding a member's annual redetermination of eligibility for the I/DD Waiver Services program:

In order for a member to be re-determined eligible, the member must:

- Meet medical eligibility;
- Meet financial eligibility;
- Be a resident of West Virginia; and
- Have chosen Home and Community-Based Services over services in an institutional setting (ICF/IID).

The member must also 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.

West Virginia Medicaid Regulations, Chapter 513 – *Applicant Eligibility and Enrollment Process*, §513.3, defines “medical eligibility” as follows: §513.3.2 states that an I/DD program member must meet medical eligibility in each of the three areas of diagnosis, functionality and the need for active treatment. §513.3.2.1 states that the member must have a diagnosis of mental retardation 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. §513.3.2.2 describes “functionality” as substantial deficits in at least three of the six major life areas as listed above. §513.3.2.2 further states that the presence of substantial deficits must be supported not only by the relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review. §513.3.2.2 defines a substantial deficit as a standardized score in a professionally accepted assessment test 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. §513.3.2.3 states documentation must support that the member would benefit from continuous active treatment, which includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and other related services.

DISCUSSION

The Appellant’s representative, his mother, testified that his intellectual disabilities stem from a traumatic brain injury he received when he was in a vehicle accident at age three. She testified that since then, she and her husband have made every effort to help him lead a normal happy life. She argued that her son’s seizure disorder constitutes an eligible diagnosis of a related mental condition. She submitted as evidence the annual goals from his high school’s individualized education program (IEP) (Exhibit A-3) indicating he made insufficient progress toward meeting his educational goals in 2014 in two out of five key areas.

The Department's representative agreed that a seizure disorder is an eligible diagnosis for the I/DD program, but she stated it was not an eligible diagnosis if it is successfully managed with medications. The Appellant's most recent independent psychological evaluation (Exhibit D-3) states in the section labeled "Medical History" that the Appellant's most recent significant seizure occurred two years ago and "his current medications are very helpful in controlling the seizures." The Department's representative stated that the evaluation reports the results several psychological tests, none of which validly confirm the presence of substantial deficits in at least three of the six major life areas listed in the policy section above. The Department's representative also pointed out, and the Appellant's representative confirmed, that the Appellant has a West Virginia Driver's License.

CONCLUSIONS OF LAW

Appellant's application for the Title XIX I/DD Waiver Program did not meet the policy requirement stated in Chapter 513.3.2.2, that documentation must demonstrate the applicant has a diagnosis of mental retardation or a related condition which constitutes a severe and chronic disability and substantial deficits in at least three of the six major life areas identified as self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living.

DECISION

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

ENTERED this 12th Day of June, 2015.

**Stephen M. Baisden
State Hearing Officer**