



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
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 16, 2015



RE: [REDACTED] V. WV DHHR
ACTION NO.: 15-BOR-2424

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

cc: Taniua Hardy, BMS
Janice Brown, APS

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2424

**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 September 16, 2015, on an appeal filed June 29, 2015.

The matter before the Hearing Officer arises from the May 19, 2015 decision by the Respondent to deny Appellant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, psychologist with ██████████. The Appellant appeared *pro se* and was represented by ██████████, the family's minister. Appearing as witnesses for the Appellant was his uncle and legal co-guardian, ██████████ and his aunt and legal co-guardian, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

*Present at the hearing, but not participating was ██████████, ██████████. Ms. ██████████ was attending the hearing to take notes for the Department's representative. The Appellant had not objections to her attendance.

Department's Exhibits:

- D-1 Correspondence from the Bureau for Medical Services to the Appellant, dated May 19, 2015
- D-2 Independent Psychological Evaluation completed by ██████████, MA, dated April 29, 2015
- D-3 Correspondence from the Bureau for Medical Services to the Appellant's co-guardians, dated January 29, 2015

- D-4 Independent Psychological Evaluation completed by [REDACTED], MA, dated December 7, 2014
- D-5 Comprehensive Psychiatric Evaluation completed by [REDACTED], MD, dated May 3, 1994
- D-6 Correspondence from [REDACTED] regarding the Appellant's ability to work independently, dated November 14, 2015
- D-7 Correspondence from [REDACTED] regarding the Appellant's ability to work independently, dated November 15, 2015
- D-8 CDR Case Referral for MC Review and Advice, referral by [REDACTED], dated October 11, 2001
- D-9 Psychosocial Assessment completed by [REDACTED], dated February 22, 1994
- D-10 [REDACTED] Medical Support Unit medical record, completed by [REDACTED] M.D., dated February 26, 2001
- D-11 [REDACTED] Medical Support Unit medical record, completed by [REDACTED] M.D., dated November 27, 2000
- D-12 School Based Assessment Team Log of Referral, dated September 1, 1989
- D-13 Social Security Administration's Disability Hearing Officer's Decision, hearing date November 16, 2001
- D-14 Social Security Administration Retirement, Survivors, and Disability Insurance Notice of Reconsideration, dated November 21, 2001
- D-15 WV Medicaid I/DD Waiver Policy Manual §513.3 - Applicant Eligibility and Enrollment Process (excerpts)

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) An application for the Title XIX I/DD Waiver Program (I/DD Waiver Program) was completed on the Appellant's behalf and denied by the Department on May 19, 2015. The denial letter indicated the Appellant's application was denied because the Appellant did not have an eligible diagnosis of intellectual disability or a related condition which was severe. (Exhibit D-1)
- 2) The Appellant's Independent Psychological Evaluation (IPE) included the results of the April 29, 2015, Reynolds Intellectual Assessment Scales (RIAS), administered by [REDACTED], MA. The Appellant's Composite Memory Index Intelligence Quotient (IQ score) of 77 was identified as being in the borderline range. (Exhibit D-2)

- 3) Prior psychological testing revealed similar range scores defined as being in the borderline range. The Wechsler Adult Intelligence Scale, Fourth Edition, administered by [REDACTED], MA, on December 7, 2014, indicated a full scale IQ score of 77. On July 19, 2001, the Appellant was administered the Wechsler Adult Intelligence Scale, Third Edition, which indicated a full scale IQ score of 74. (Exhibits D-2 and D-4)
- 4) In order to meet the eligibility criteria of having an Intellectual Disability or related condition which is severe, the scale score must be three (3) standard deviations below the mean. The Appellant would have to score 55 or below on the scale to meet the I/DD Waiver Program criteria. (Exhibit D-1)
- 5) The Appellant's IPE included results of the April 29, 2015 Childhood Autism Rating Scale, Second Edition (CARS2), administered by [REDACTED] MA, and used to identify children and adults with autism. The Appellant was assessed with a score of 31.0, which is defined as mild-to-moderate symptoms of autism. The Appellant would have to display symptoms defined as severe in order to be considered an eligible diagnosis. (Exhibit D-2)
- 6) The Appellant's legal co-guardians, [REDACTED], provided testimony regarding their declining health and expressed concern for the Appellant's future welfare in the event of their passing.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513- *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3 states that an applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN).

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.1, lists examples of related conditions which may, if severe and chronic in nature, be program eligible diagnoses, include but are not limited to autism, Traumatic Brain Injury, Cerebral Palsy; Spinal Bifida, and any condition, other than mental illness, closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires services similar to those required for persons with mental retardation.

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.2 reads, "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 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.”

DISCUSSION

The Medical Eligibility Contracted Agency (MECA) determines the qualification for an IDD level-of-care based on an IPE that verifies the applicant has mental retardation or a related condition which is severe and chronic in nature. Policy requires the MECA to rely on test scores derived from IPE’s, along with narratives and notes which support the scores. Narratives and notes are not a substitute for eligible scores and cannot be used alone to confirm medical eligibility.

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, an individual must meet the three criteria of diagnosis, functionality, and the need for active treatment. Initial medical eligibility is determined through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). If the criteria of medical diagnosis are not met, the individual cannot be determined eligible for the IDD/Waiver Program.

The Appellant’s witnesses provided testimony that the Appellant requires constant reminders via telephone calls throughout the day to complete activities of daily living. The Appellant’s uncle and aunt provided emotional testimony regarding their concerns for the Appellant’s safety and future well-being in the event of their passing. However, the testimony and evidence presented on the Appellant’s behalf failed to establish that the validity of the test scores gleaned through multiple tests were inaccurate.

Evidence established that the Appellant failed to meet the criteria of an eligible diagnosis of mental retardation or that of a related condition which is severe in nature. The Appellant’s IQ score was measured in the borderline range. The Appellant failed to provide evidence of a diagnosis of mental retardation or a related condition which is severe.

CONCLUSIONS OF LAW

The Appellant’s application for the Title XIX I/DD Waiver Program did not meet the policy requirement of a diagnosis of mental retardation or a related condition which is severe in nature as defined by policy. Therefore, the Appellant does not meet the medical component of eligibility.

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 ____ Day of September 2015.

**Donna L. Toler
State Hearing Officer**