



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

September 29, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2556

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, [REDACTED] WV

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2556

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on September 24, 2015, on an appeal filed July 14, 2015.

The matter before the Hearing Officer arises from the May 12, 2015 decision by the Respondent to deny the Appellant's application to the Title XIX Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Services Program.

At the hearing, the Respondent appeared by Representative ██████████, psychological consultant to the WV DHHR, Bureau for Medical Services. Appearing as a witness for the Respondent was Kelley Johnson of the WV Bureau for Medical Services. The Appellant appeared by his Representative ██████████, WV DHHR Adult Protective Service (APS) worker. Appearing as a witness for the Appellant was ██████████, APS supervisor. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 ICF/IID Manual, Chapter 511 – *Covered Services, Limitations, and Exclusions for ICF/MR (now ICF/IID) Services*, §511.5, Member Eligibility
- D-2 Letter of application denial for the ICF/IID Program, dated April 27, 2015
- D-3 WV DHHR ICF/MR (now ICF/IID) Level of Care Evaluation, dated April 22, 2015
- D-4 Comprehensive Psychological Evaluation completed by ██████████, dated April 22, 2015

- D-5 Admission Criteria Checklist from [REDACTED]
- D-6 Social History for Appellant, dated May 4, 2015

Appellant's Exhibits

- A-1 Letter from Social Security Administration, dated September 17, 2015
- A-2 Letter from [REDACTED], dated September 11, 1996
- A-3 Collection of documents from [REDACTED]
- A-4 Neurological Assessment of Appellant from [REDACTED], dated July 14, 2015
- A-5 Aged and Disabled Waiver Services Member Assessment, dated April 2, 2015
- A-6 Psychological Evaluation from [REDACTED], Ph.D., dated September 14, 1993

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 Appellant's guardian, her Adult Protective Services worker at the WV DHHR, [REDACTED] office, applied for the Title XIX ICF/IID Services Program on the Appellant's behalf.
- 2) Pursuant to her application, the Appellant's representative submitted to Psychological Consultation and Assessment, the contracting agency contracted to evaluate ICF/IID Services Program applications, a medical evaluation dated April 15, 2015 (Exhibit D-3), a psychological evaluation dated April 22, 2015 (Exhibit D-4) and a social history dated May 4, 2015 (Exhibit D-6).
- 3) Based on the results of these assessments, the WV Department of Health and Human Resources (hereinafter referred to as the Department) determined the Appellant was not medically eligible for the program because the documentation supported delays more attributable to mental health challenges than intellectual disability, and issued a denial letter (Exhibit D-2) on May 12, 2015.
- 4) The Appellant's representative requested a fair hearing to protest the Department's denial of the Appellant's application.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 511 - *Covered Services, Limitations, and Exclusions for ICF/MR (now ICF/IID) Services*, §511.5 Member Eligibility (Exhibit D-1), states that an individual who applies for ICF/IID Services must provide a medical evaluation, a psychological evaluation, a social history, and an individual program plan. §511.5.4 Medical

Eligibility Criteria states that an applicant for ICF/IID Services must have both a diagnosis of mental retardation or a related condition and also manifest concurrent substantial adaptive deficits. §511.5.4.1 states that “a related condition” as written above means a severe chronic disability which is attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation. §511.5.4.1 further states that the mental retardation or related condition must have manifested before the individual reaches 22 years of age and must be likely to continue indefinitely.

DISCUSSION

According to the Appellant’s letter of denial for the ICF/IID Services Program (Exhibit D-2), the Applicant’s application was denied because the documentation submitted “supports delays that are primarily related more to mental health challenges rather than intellectual disability and/or [a] related condition.”

The medical evaluation (Exhibit D-3) submitted as part of the Appellant’s ICF/IID application lists diagnoses of schizoaffective bipolar disorder and post-traumatic stress disorder or PTSD (Exhibit D-3). The diagnostic section of the document reports a diagnosis of cerebral palsy, but nothing to indicate the severity of the condition.

The psychological evaluation (Exhibit D-4) also submitted as part of the Appellant’s ICF/IID application listed a diagnosis of borderline intellectual functioning and not mental retardation. The psychological evaluation also listed a diagnosis of cerebral palsy, but again did not provide an indication of severity.

The Appellant’s representative submitted as evidence documents which she argued supported her position that the Appellant had an eligible diagnosis. She submitted a letter dated September 17, 2015, from the Social Security Administration (Exhibit A-1), indicating the Appellant was approved for Supplemental Security Insurance (SSI) on February 22, 1993, “because [of] mental retardation.” The letter did not include a physician’s diagnosis of retardation.

The Appellant’s representative submitted a collection of documents from the [REDACTED] (Exhibit A-3), which included diagnoses of cerebral palsy. The Department’s representative pointed out on this document that the psychiatric assessment dated January 4, 1996, indicates the Appellant was not hospitalized because of the cerebral palsy, but for concerns of “worsening depression, psychosis, suicidal thoughts and behavior.”

The Appellant’s representative submitted a psychological evaluation from [REDACTED], Ph.D., [REDACTED] dated September 14, 1993 (Exhibit A-6), which lists a diagnosis of cerebral palsy in the diagnosis section, but it specifies that the diagnosis is “mild.”

The Appellant’s representative submitted documentation to indicate the Appellant has cerebral palsy. However, she did not provide evidence or testimony to support her position that the Appellant’s cerebral palsy is severe. She did not provide documentation that the Appellant had a diagnosis of mental retardation or a related condition that is both severe and chronic in nature.

CONCLUSION OF LAW

Appellant's application for the Title XIX ICF/IID Program did not meet the policy requirement stated in BMS Provider Manual Chapter 511, §511.5, that documentation must demonstrate the applicant has diagnosis of mental retardation or a related condition which is severe and chronic in nature.

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 ICF/IID Services Program.

ENTERED this 29th Day of September, 2015.

Stephen M. Baisden
State Hearing Officer