



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

September 17, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2561

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2561**

**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 17, 2015, on an appeal filed July 14, 2015.

The matter before the Hearing Officer arises from the July 6, 2015, decision by the Respondent to deny the Appellant services under the I/DD Waiver program.

At the hearing, the Respondent appeared by ██████████, consulting psychologist with the Bureau for Medical Services. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated July 6, 2015
- D-2 Independent Psychological Evaluation dated May 6, 2015
- D-3 Correspondence from ██████████, M.D. dated May 4, 2015
- D-4 Correspondence from ██████████, D.O. dated February 2, 2010
- D-5 Correspondence from ██████████ M.D. dated January 20, 2010
- D-6 West Virginia Medicaid Provider Manual §513.3

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 applied for services under the I/DD Waiver program. The Department issued Notice (D-1) on July 6, 2015, advising that the Appellant's application was denied as the medical criteria had not been met.
- 2) The Appellant was diagnosed (D-2) with schizophrenia as a result of an Independent Psychological Evaluation (IPE) on May 6, 2015.
- 3) The Appellant was previously diagnosed (D-3, D-4 and D-5) with Attention Deficit Hyperactive Disorder (ADHD) and lower intellectual functioning.
- 4) The Wechsler Adult Intellectual Scale (WAIS), a test that measures intellectual functioning, was administered (D-2) during the IPE. The Appellant was found to have a full scale IQ of 82. The mean of this test is 100.
- 5) The Wide Range Achievement Test (WRAT), a test that measures academic achievement, was administered (D-2) to the Appellant during the IPE. The Appellant had standard scores ranging from 71 to 99 in the areas tested. The mean of this test is 100.

## **APPLICABLE POLICY**

West Virginia Medicaid Provider Manual §513.3.2 states that in order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic and functionality criteria and demonstrate a need for active treatment criteria.

### **Diagnosis**

The applicant 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.

Examples of related conditions which may, if severe and chronic in nature, may make an individual eligible for the I/DD Waiver Program include but are not limited to, the following:

- Autism;
- Traumatic brain injury;
- Cerebral Palsy;
- Spina Bifida; and
- Any condition, other than mental illness, found to be closely related to mental retardation because this 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.

## **DISCUSSION**

The Department contended that the Appellant did not have an eligible diagnosis of mental retardation or a related condition to meet the diagnostic criteria to receive services under the I/DD Waiver program. The Appellant was diagnosed with schizophrenia, and any adaptive deficits present appear to be a direct result of the Appellant's mental illness.

The Department's expert witness testified that based on the intelligence tests administered to the Appellant during the psychological evaluation in May 2015, the Appellant does not have an intellectual disability. The Appellant's scores were in the average range of intellectual functioning and ability therefore, mental retardation was not present. Policy specifically excludes mental illness as an eligible diagnosis for I/DD Waiver services.

The Appellant's witnesses purported that the Appellant had intellectual deficits that affect her activities of daily living. She requires 24-hour supervision for her safety and assistance is needed for her care to prevent institutionalization.

## **CONCLUSIONS OF LAW**

The evidence submitted demonstrated that the Appellant does not have a diagnosis of mental retardation or related condition, and policy specifically excludes mental illness as an eligible diagnosis.

Whereas the documentation submitted failed to establish that the Appellant met the diagnostic criteria required by policy for the I/DD Waiver program, medical eligibility was not met.

## **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's denial of the Appellant's application for I/DD Waiver services.

**ENTERED this 17<sup>th</sup> day of September 2015**

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**Kristi Logan**  
**State Hearing Officer**