



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 24, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3175

Dear [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,

Lori Woodward
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-3175

**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 November 18, 2015, on an appeal filed October 1, 2015.

The matter before the Hearing Officer arises from the September 18, 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 ██████████, a psychologist consultant to the WV DHHR, Bureau for Medical Services (BMS). The Appellant appeared by his mother, ██████████, who was being represented by ██████████, developmental specialist for Birth-to-Three. Also in attendance, but did not participate in the proceeding, were ██████████, developmental specialist for Birth-to-Three, and Pam Harrison, BMS. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, §513.3, *et. seq.*
- D-2 Notice of Denial, dated September 18, 2015
- D-3 Independent Psychological Evaluation (IPE) completed on September 10, 2015

Appellant's Exhibits:

- A-1 Individual Skills Assessment, ██████████, dated November 11, 2015
- A-2 Physical Therapy Evaluation/Assessment Summary, ██████████, dated November 11, 2015

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 September 18, 2015, the Appellant's guardian and mother, [REDACTED] (Ms. [REDACTED]), was notified that his application for benefits and services through the Medicaid I/DD Waiver Program (Program) was denied. This notice indicates that the documentation submitted did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas for program eligibility. (Exhibit D-2)
- 2) The Respondent conceded that the Appellant's diagnosis of Unspecified Intellectual Disability meets the medical diagnosis criteria for eligibility. The Respondent also conceded that the Appellant had a substantial adaptive deficit in the major life area of Self-Care. (Exhibit D-2)
- 3) The narrative and test scores on the Appellant's 2015 IPE did not indicate any substantial deficits for program eligibility in the area of adaptive behaviors except in the area of Self-Care. (Exhibit D-3)

APPLICABLE POLICY

WV Medicaid Provider Manual §513.3.1.1 explains that the initial eligibility determination process involves the use of an IPE which includes assessments which support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is used in making a medical eligibility determination for the Program.

WV Medicaid Provider Manual §513.3.2 states that in order to establish medical eligibility for participation in the Program, an individual must meet the diagnostic, functionality and need for active treatment criteria.

WV Medicaid Provider Manual §513.3.2.1 requires that the applicant 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, if severe and chronic in nature, may make an individual eligible for the 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. Additionally, the applicant who has a diagnosis of mental retardation or a severe related condition with associated concurrent adaptive deficits must meet the following

requirements: Likely to continue indefinitely; and, must have the presence of at least 3 substantial deficits out of the 6 identified major life areas listed in Section 513.3.2.2.

WV Medicaid Provider Manual §513.3.2.2, instructs that the applicant must have substantial deficits in at least 3 of the 6 identified major life areas: Self-Care; Receptive or Expressive Language (communication); Learning (functional academics); Mobility; Self-direction; and, Capacity for Independent Living which includes the six (6) sub-domains of home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three (3) of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three (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 mentally retarded normative populations when mental retardation has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

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. A program applicant must meet all three criteria for Program eligibility.

██████████ (Ms. ██████████), the Respondent's witness, testified that she is a licensed psychologist in the state of West Virginia, and that her office, ██████████ (██████████), is a contracted agency with the West Virginia Department of Health and Human Resources (Department), responsible for medical eligibility determinations for the Title XIX I/DD Waiver Program. In this capacity, Ms. ██████████ reviewed the application of the Appellant. Ms. ██████████ testified that a review of the application showed that the Appellant has a diagnosis of Trisomy 21, and has been determined to have an Unspecified Intellectual Disability, which meets the medical diagnosis criteria for program eligibility. However, the Appellant was not found to have met the functionality criteria, with just one substantial deficit found in the major life area of Self-Care.

The Appellant was a 1 year, 9 month old child when the IPE was conducted. The Developmental Profile-Third Edition (DP-3) which measured intellectual/cognitive abilities showed that the Appellant currently functions at some level of mental impairment, which supports the medical diagnosis eligibility criteria. Per policy, the Adaptive Behavior Assessment System-Second Edition (ABAS-II) is used to measure adaptive behavior skills for children in Appellant's age group. In order to meet the substantial deficit criteria under ABAS-II, standard

scores of 1 or 2 need to be found. The Appellant showed one out of the six sub-domains under the major life area of Capacity for Independent Living which was found to have a program eligible score - social skills. Although the Appellant had low scores in other sub-domains, in order to qualify as a substantial deficit in the subcategory of Capacity for Independent Living, the Appellant needed to be substantially limited in at least three of the sub-domains as defined by policy. The Appellant scored extremely low in the major life areas of Communication and Self-Direction with a standard score of 3. However, a standard score of 3 is not considered a substantial deficit per policy. The narrative in the IPE was found to support the findings of the DP-3 and ABAS-II.

The Appellant's witness, [REDACTED] (Mr. [REDACTED]), argued that the ABAS-II was not a good measurement for functionality for children in the Appellant's age group. He proffered that the Battelle Developmental Inventory (Battelle) assessment should be used instead, which was administered projecting the Appellant's functionality at age two. (Exhibit A-1) Although the Battelle test was not given any weight in this decision, the narrative portion in Appellant's Exhibit A-1 appeared to confirm the findings in the Appellant's IPE narrative.

The evidence did not show that the Appellant met the functionality policy criteria necessary for program eligibility. No additional major life area deficits were identified based on the evidence presented at the hearing.

CONCLUSION 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 Title XIX I/DD Waiver Program.

ENTERED this 24th day of November 2015.

Lori Woodward, State Hearing Officer