



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

March 31, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1112

Dear Mr. [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: 16-BOR-1112

**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 March 24, 2016, on an appeal filed January 19, 2016.

The matter before the Hearing Officer arises from the December 15, 2015 decision by the Respondent to deny medical eligibility for services under the I/DD Waiver program.

At the hearing, the Respondent Appeared by ██████████, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his father, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.3
- D-2 Notice of Denial dated December 15, 2015
- D-3 Independent Psychological Evaluation dated November 19, 2015
- D-4 Medical Documentation from ██████████, M.D. dated March 15, 2015
- D-5 Individualized Family Service Plan from WV Birth to Three for June 2015-June 2016

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 a Notice of Denial (D-2) on December 15, 2015, advising that the Appellant's application was denied as the medical criteria for the program had not been met.
- 2) The Appellant was diagnosed (D-4) with Down's syndrome in March 2015.
- 3) As part of the eligibility determination process, the Appellant underwent an Independent Psychological Evaluation (D-3) in November 2015. The Appellant was eight months old at the time of the evaluation.
- 4) The Developmental Profile 3 (DP-3) was administered (D-3) to the Appellant during the psychological evaluation. The Appellant had scores ranging from 74-89 in the developmental areas tested.
- 5) The Adaptive Behavior Assessment System, Second Edition (ABAS-II) administered (D-3) to the Appellant yielded scores ranging from 3-10 in the major life areas tested.

APPLICABLE POLICY

WV 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, functionality and need for active treatment criteria.

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, 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.

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.

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 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 the I/DD Waiver program, an individual must have a diagnosis of an intellectual disability or a related condition that impairs the individual's intellectual functioning and adaptive behavior similar to a person with an intellectual disability. The Appellant's application was denied as the diagnostic criteria for program eligibility had not been met. The Department's expert witness testified that Down's syndrome is not an eligible diagnosis for the program and there was no evidence that the Appellant had an intellectual disability. Ms. [REDACTED] referred to the tests administered during the Appellant's psychological evaluation. A substantial adaptive deficit is defined as scores 3 standard deviations below the mean. The mean for the DP-3 is 100, and 3 standard deviations below the mean is a score of 55 or below. The Appellant did not have any eligible scores on the DP-3. The mean for the ABAS-II is 10, and 3 standard deviations below the mean is a score of 1 or 2. The Appellant did not have any eligible scores on the ABAS-II.

Based on the information submitted, the Appellant did not meet the medical eligibility criteria as found in policy to qualify for services under the I/DD Waiver program.

CONCLUSIONS OF LAW

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 31st day of March 2016

**Kristi Logan
State Hearing Officer**