



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

May 5, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1569

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,

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: 16-BOR-1569

**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 May 4, 2016, on an appeal filed March 24, 2016.

The matter before the Hearing Officer arises from the January 25, 2016 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 psychological consultant to the West Virginia Department of Health and Human Resources (WV DHHR), Bureau for Medical Services (BMS). The Appellant appeared by ██████████ with the WV DHHR. 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 January 25, 2016
- D-3 Independent Psychological Evaluation (IPE) completed on January 12, 2016

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) On January 25, 2016, the state of WV DHHR, the Appellant's legal guardian, was notified that the Appellant's 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 stipulated to the Appellant meeting the medical diagnosis criteria for eligibility and that he met two substantial major life area deficits of Self-Care and Learning. (Exhibit D-2)
- 3) As part of the application process, the Appellant underwent an Independent Psychological Evaluation (IPE) on January 12, 2016. (Exhibit D-3)
- 4) The narrative and test scores on the Appellant's 2016 IPE did not indicate any substantial deficits for program eligibility in the area of adaptive behaviors except in the areas of Self-Care and Learning. (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 that 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. Individuals who have 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 WV DHHR, responsible for medical eligibility determinations for the Title XIX I/DD Waiver Program. In this capacity, Ms. ██████████ reviewed the application of the Appellant.

The Independent Psychological Evaluation (IPE) the Appellant underwent on January 12, 2016 as part of the application process was reviewed by Ms. ██████████. The Appellant scored a 59 on the Full Scale Intelligence Quotient (IQ) portion of the Wechsler Adult Intelligence Scale-Fourth Edition which supports the diagnosis of Mild Intellectual Disability diagnosed prior to age 22. Ms. ██████████ stipulated to the Appellant meeting the medical diagnosis criteria for program eligibility.

However, in reviewing the Adaptive Behavior Assessment System-Second Edition (ABAS-II) and the corresponding narrative in the IPE, Ms. ██████████ found the Appellant met only 2 (two) out of the possible 6 (six) major life areas identified for Program eligibility. Policy defines a substantial adaptive deficit as standardized test scores of 3 standard deviations below the mean, or less than one percentile. The presence of substantial adaptive deficits must be supported not only by relevant test scores, but also by narrative descriptions submitted for review.

The Appellant was found to be functioning at less than one percentile in the areas of Self-Care and Learning as determined by the ABAS-II. Although the Appellant had very low ABAS-II scores of 3 in the areas of Community Use, Home Living, Health and Safety, Leisure, Self-Direction, and Social, in order to meet the substantial deficit criteria under ABAS-II, standard scores of 1 or 2 need to be found. The individual must be so delayed or compromised that he or she would require institutionalized level of care.

With respect to the major life area of Self-Direction, Ms. [REDACTED] testified this area examines an individual's ability to make decisions such as what to wear, what to eat for dinner, and if an individual can think of something and do it. The Appellant's representative, [REDACTED] (Ms. [REDACTED]) testified that although the Appellant can make his own decisions, they are not the proper decisions because he lacks the capacity of understanding the consequences of his decisions. He did receive a standard score of 3 on the ABAS-II which is a low score; 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 ABAS-II.

Ms. [REDACTED] asserted that the Appellant should have been awarded a deficit in the area of health and safety which is a sub-category of Capacity for Independent Living. Ms. [REDACTED] cited a previous fire incident and the Appellant's inability to take his medications. The narrative portion of the IPE mentions that the Appellant was "involved" in a fire and he has "difficulty" recognizing possible dangers. The narrative also notes that "[REDACTED] sometimes shows caution around hot or dangerous items." He scored a 3 in the ABAS-II in health and safety, extremely low, which is not considered a substantial deficit as defined by policy.

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.

CONCLUSIONS OF LAW

- 1) The documentation submitted failed to establish that the Appellant demonstrated at least three substantial adaptive deficits in the six major life areas. Standardized test scores identified a substantial adaptive deficit in the area of Self-Care and Learning.
- 2) The Appellant does not meet the functionality criteria based on the documentation submitted for I/DD Waiver program eligibility.

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 5th day of May 2016.

Lori Woodward, State Hearing Officer