



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 21, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2515

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,

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

_____?

V.

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

DECISION OF STATE HEARING OFFICER

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 15, 2016, on an appeal filed August 17, 2016.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her parents, [REDACTED] and [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

D-1 Bureau for Medical Services Provider Manual §513.6
D-2 Notice of Denial dated August 2, 2016
D-3 Notice of Denial (Amended) dated August 18, 2016
D-4 Independent Psychological Evaluation dated July 13, 2016
D-5 Psychoeducational Diagnostic Report dated March 22, 2011
D-6 Adaptive Behavior Evaluation Scales, School Version dated March 2011

16-BOR-2515

FINDINGS OF FACT

- 1) The Appellant applied for services under the I/DD Waiver Program. The Department issued a Notice of Denial (D-3) on August 18, 2016, advising that the Appellant's application was denied as the medical criteria had not been met.
- 2) The Appellant has an eligible diagnosis (D-4) of mild Intellectual Disability.
- 3) The Adaptive Behavior Assessment Scale, Third Edition (ABAS-III), was administered (D-4) to the Appellant during an Independent Psychological Evaluation on July 13, 2016. Based on her scores from the ABAS-III, the Appellant was demonstrating a substantial adaptive deficit in the major life area of receptive or expressive language.
- 4) No other substantial adaptive deficits were identified as a result of the documentation submitted with the Appellant's application.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that in order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality, need for active treatment, and requirement of ICF/IID Level of Care criteria.

Diagnosis

The applicant must have a diagnosis of intellectual disability 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 intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disability.

Additionally, the applicant who has a diagnosis of intellectual disability 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 three substantial deficits out of the six identified major life areas listed in Section 513.6.2.2.

Functionality

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three 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 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

The Appellant met the diagnostic criteria for participation in the I/DD Waiver Program with an eligible diagnosis of mild Intellectual Disability. To meet the functionality criteria for the program, the Appellant must demonstrate at least three (3) substantial adaptive deficits of the six (6) major life areas identified in policy.

Policy defines a substantial adaptive deficit as a standardized score of three (3) deviations below the mean, or less than one (1) percentile. The ABAS-III administered to the Appellant has a mean, or average score, of ten (10). An eligible score of 3 standard deviations below the mean of 10, or less than 1 percentile, is a score of a 1 or 2. The Appellant had eligible scores in the areas of communication (receptive or expressive language) and leisure and social.

The areas of leisure and social are sub-domains of the major life area of capacity for independent living. The Appellant would need eligible scores in at least three (3) of the sub-domains of capacity for independent living to qualify as demonstrating a substantial adaptive deficit in this major life area. The Appellant had only two eligible scores in the sub-domains of leisure and social.

The Appellant's parents provided testimony regarding the areas of learning, self-direction, self-care and community use, contending that the Appellant had substantial adaptive deficits in these areas.

The Appellant was administered the Wide Range Achievement Test-4 (WRAT-4), which measures an individual's basic skills in reading, spelling and mathematics. The mean of this test is 100, eligible tests scores of three standard deviations below the mean of 100 is a score of 55 or lower. The Appellant did not have any scores at or below 55 in the areas tested. This test, coupled with the ineligible score of a 3 in functional academics on the ABAS-III, fails to establish a substantial adaptive deficit in the area of learning for the Appellant.

The Appellant had a score of 4 in self-direction, a 5 in self-care and a 6 in community use as a result of the ABAS-III. These scores correspond with the narrative description of the Appellant's abilities in these areas, therefore substantial adaptive deficits in these areas were not established.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic, functionality and need for active treatment criteria must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria for Program eligibility.
- 3) Policy requires that for the functionality criteria to be met, the applicant must be demonstrating at least three (3) substantial adaptive deficits of the six (6) major life areas as determined by standardized test scores which must also be supported by the narrative descriptions contained in the documentation submitted for review.
- 4) The Appellant was found to have eligible test scores in the areas of receptive or expressive language (communication), and the sub-domain areas of social and leisure.
- 5) A substantial adaptive deficit could not be identified in the area of capacity for independent living, as the Appellant had only two (2) eligible scores in the sub-domains that comprise the major life area, and policy requires scores in at least three (3) sub-domains to establish a deficit in capacity for independent living.
- 6) Whereas the documentation submitted failed to establish that the Appellant met the functionality criteria required by policy for participation in 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 decision to deny the Appellant's application for services under the I/DD Waiver program.

ENTERED this 21st day of September 2016

Kristi Logan
State Hearing Officer