



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

April 5, 2017

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR  
ACTION NO.: 17-BOR-1021

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
KEPRO  
PC&A

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

█, A JUVENILE,

**Appellant,**

v.

**Action Number: 17-BOR-1021**

**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 █, a juvenile. 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 February 2, 2017, on an appeal filed January 5, 2017.

The matter before the Hearing Officer arises from the November 10, 2016 decision by the Respondent to deny the Appellant medical eligibility for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by █. The Appellant appeared *pro se*, by her guardian █. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- |     |   |
|-----|---|
| D-1 | Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services (excerpt)      |
| D-2 | Notice of denial, dated November 10, 2016   |
| D-3 | Independent Psychological Evaluation (IPE) of the Appellant, evaluation date October 17, 2016 |

**Appellant's Exhibits:**

- |     |   |
|-----|---|
| A-1 | Documentation regarding a power wheelchair assessment for the Appellant |
|-----|---|

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 was an applicant for I/DD Waiver Program services.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) [REDACTED], a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent denied the Appellant's application and issued a notice (Exhibit D-2) dated November 10, 2016, indicating the denial reason as unmet functionality in all of the six major life areas considered for the program except the area of *Self Care*.
- 5) The psychological evaluation of the Appellant includes the results of her adaptive behavior testing, utilizing the Adaptive Behavior Assessment System – 3<sup>rd</sup> Edition, Parent Form (ABAS-III). (Exhibit D-3)
- 6) The ABAS produces scores with a mean of ten (10) and a standard deviation of three (3). Scores of one (1) or two (2) are indicative of a substantial adaptive deficit in a major life area.
- 7) The Appellant has scores indicative of substantial adaptive deficits in the skill areas and corresponding major life areas of *Self Care* and *Self Direction*. (Exhibit D-3)
- 8) The narrative section of the Appellant's IPE (Current Status, Self-Direction, page 8 of 14, Exhibit D-3) notes, "Based on her parents' report, and observed behaviors during this evaluation, [the Appellant] is able to express wants and needs. [The Appellant] self-initiated communication during the testing several times that she was distracted by sounds."

### **APPLICABLE POLICY**

The policy regarding initial medical eligibility for the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.6.2. This policy requires applicants to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, the need for active treatment and the requirement of ICF/IID level of care.

The policy regarding functionality is located at §513.6.2.2, and requires the applicant to have substantial deficits in at least three of six identified major life areas: self-care, receptive or expressive language (communication), learning (functional academics), mobility, self-direction and the capacity for independent living. The policy defines substantial deficits 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...” Additionally, this policy requires the presence of substantial deficits to “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...”

## **DISCUSSION**

The Respondent denied the Appellant’s application for the I/DD Waiver Program based on unmet medical eligibility. The Respondent must show, by a preponderance of the evidence, that the Appellant did not meet the medical eligibility requirement of functionality.

The Appellant did not meet the functionality requirement for medical eligibility because she did not have substantial deficits, as defined by policy, in at least three of the six major life areas. Only two of the Appellant’s standardized scores were in the range of three standard deviations below the mean or less than one percentile using the ABAS tool for measuring adaptive behavior. Of these, the major life area of *Self Direction* did not have a supporting narrative description indicative of a substantial deficit that is required by policy.

The IPE of the Appellant described her ability to express her wants and needs, as well as initiating communication on her own. This narrative is contradictory to her ABAS test score in the area of *Self Direction*, and does not indicate the presence of a substantial deficit in this area. It should be noted that with or without this major life area the Appellant would not have met the functionality component of medical eligibility for the I/DD Waiver Program because policy requires at least three major life areas with substantial deficits and a third area was neither proposed nor in an eligible score range for consideration of the narrative descriptions.

Without the functionality requirement, the Appellant does not meet medical eligibility requirements and the Respondent was correct to deny her application for the I/DD Waiver Program.

## **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not have eligible standardized scores from an instrument used to measure substantial deficits in at least three of the six major life areas identified in I/DD Waiver Program policy, the functionality component could not be established.
- 2) Because the Appellant did not meet the functionality requirement, medical eligibility as a whole could not be established and the Respondent must deny the Appellant’s application for the I/DD Waiver Program.

**DECISION**

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

**ENTERED this \_\_\_\_ Day of April 2017.**

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**Todd Thornton  
State Hearing Officer**