



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jim Justice
Governor**

**BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

**Bill J. Crouch
Cabinet Secretary**

August 10, 2017

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 17-BOR-2091

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Janice Brown
Sarah Clendenin
Pat Nisbet
Taniua Hardy
Teresa McDonough

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 17-BOR-2091

**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 protected individual. 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 August 9, 2017, on an appeal filed July 10, 2017.

The matter before the Hearing Officer arises from the May 31, 2017 decision by the Respondent to deny the Appellant medical eligibility for the Intellectual Developmental Disabilities (IDD) Waiver Program.

At the hearing, the Respondent appeared by █, Licensed Psychologist with █ (█). The Appellant appeared *pro se* by his mother, █. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 513: IDD Waiver Services
- D-2 Notice of Denial, dated May 31, 2017
- D-3 Independent Psychological Evaluation (IPE), dated April 19, 2017

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was an applicant for IDD Waiver Program Services.
- 2) The Bureau for Medical Services contracts with [REDACTED] ([REDACTED]) to determine medical eligibility for the IDD Waiver Program.
- 3) The Respondent representative, [REDACTED], is a licensed psychologist with [REDACTED].
- 4) On May 31, 2017, the Respondent issued a notice of denial to the Appellant on the basis that the Appellant did not have an eligible diagnosis of Intellectual Disability or a Related Condition which is severe, and did not require an Intermediate Care Facility (ICF) Level of care. (Exhibit D-2)
- 5) An IPE of the Appellant, dated April 19, 2017 reflects that the Appellant had no diagnosis. (Exhibit D-3)
- 6) The Appellant's mother, [REDACTED], was the reporter for the developmental history, autism rating scale, and adaptive behavior scales for the IPE. (Exhibit D-3)
- 7) On the IPE, the Appellant had an Intelligence Quotient (IQ) of 132, which placed him in the gifted range of intellectual ability. (Exhibit D-3)
- 8) The IPE reflected that the Appellant's adaptive behaviors were well developed in all areas except for motor skills, self-care, and health and safety. (Exhibit D-3).
- 9) The Appellant has the cognitive skills needed to develop higher levels of academic and life skills.
- 10) The Appellant does not have an eligible diagnosis of Intellectual Disability or a Related Condition which is severe and does not require an ICF level of care. (Exhibit D-3)

APPLICABLE POLICY

Chapter 513 §513.6 Applicant Eligibility and Enrollment Process provides that:

In order for an applicant to be found eligible for the IDD Wavier Program, they must meet medical eligibility...Medical eligibility is determined by the

Medical Eligibility Contract Agent (MECA) through a review of the IPE completed by a member of the Independent Psychologist Network.

Chapter 513 §513.6.2 Initial Medical Eligibility provides that:

To be medically eligible, the applicant must require the level of care and services provided in an ICF...Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current levels of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF...

The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for active treatment; and
- Requirement of ICF/IID Level of Care

DISCUSSION

The Appellant was an applicant of the IDD Waiver Program. Policy requires that applicants must meet medical eligibility. To meet medical eligibility, an applicant must require an ICF level of care and must have an eligible diagnosis and substantial functional deficits confirmed on an IPE. [REDACTED] was the MECA assigned to determine the Appellant's eligibility for IDD Waiver Program. The Respondent denied the Appellant's application because the Appellant does not have an eligible diagnosis or require an ICF level of care as required to meet medical eligibility for the IDD Waiver Program. The Appellant representative contends that the Appellant wears leg braces, falls, and has Autism characteristics such as not socializing with other children his age, isolating to his bedroom, and not adjusting well to a change in routine.

Pursuant to policy, the Respondent must demonstrate, by a preponderance of the evidence that the Appellant did not meet the medical eligibility requirement of an eligible diagnosis related to intellectual disability or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. The Independent Psychological Evaluation (IPE) was conducted in the Appellant's home with the Appellant's representative present and acting as rater for the Appellant's developmental history, autism rating scale, and adaptive behavior scales. The Appellant demonstrated age appropriate self-care, communication, functional learning, self-direction, home living, socialization, and leisure skills. Although the Appellant's IPE results were below average in the areas of motor skills, community use, and had low adaptive behavior scores for self-care, the Appellant's functioning did not rise to the level of substantial deficits. Further,

results of the Stanford Binet Intelligence Scales demonstrate that the Appellant has an IQ of 132, which falls in the gifted range of intellectual ability. The Respondent testified that a typical IDD Waiver Program participant scores an IQ of 60 or below. Both the IPE and the Appellant representative disclose that the Appellant no longer attends a pre-school program because he was too advanced for the program.

The Appellant representative testified that the Appellant has been seen by four (4) different psychologists in addition to having the IPE. The Appellant representative testified that the Appellant has been diagnosed with Asperger's. However, no evidence or witness testimony was presented to corroborate the Appellant representative's report of diagnosis or how the diagnosis translated into substantial deficits that would qualify the Appellant for the IDD Waiver Program.

After weighing the evidence and testimony presented, the Respondent's decision to deny the Appellant's application for the IDD Waiver Program was correct. No reliable information was presented to support that the Appellant has a qualifying diagnosis or substantial deficits. The Respondent has shown by a preponderance of evidence that the Appellant did not have a diagnosis of Intellectual Disability or a related condition which is severe and did not require an ICF level of care.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, to meet medical eligibility for the IDD Waiver Program, the Appellant must have an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits and require an ICF level of care.
- 2) The Appellant did not have an eligible diagnosis of Intellectual Disability or a related condition which is severe.
- 3) The Appellant did not require an ICF Level of Care.
- 4) The Appellant is not medically eligible for the IDD Waiver Program.
- 5) The Respondent was correct in the denial of the Appellant's application for the IDD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision by the Department to deny the Appellant's application for services under the IDD Waiver Program.

ENTERED this 10th day of August 2017.

Tara B. Thompson
State Hearing Officer