



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

October 31, 2017



RE: [REDACTED] A JUVENILE v. WV DHHR
ACTION NO.: 17-BOR-2273

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, WV Bureau for Medical Services

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

■ A JUVENILE,

Appellant,

v.

Action Number: 17-BOR-2273

**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 child ■. This hearing was held in accordance with the provisions found in Chapter 700 of the WV Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on October 5, 2017, on an appeal filed August 10, 2017.

The matter before the Hearing Officer arises from the July 31, 2017 decision by the Respondent to deny the Appellant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by Representative ■, psychological consultant to the WV DHHR, Bureau for Medical Services. The Appellant appeared by her Representative, ■, MD. Appearing as a witness for the Appellant was ■, the Appellant's mother. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.6, Applicant Eligibility and Enrollment Process
- D-2 Letter of application denial for the I/DD Waiver Program, dated July 31, 2017
- D-3 Independent Psychological Evaluation (IPE) from ■, Ed. D, evaluation date June 30, 2017
- D-4 IPE from ■, ■, MA, evaluation date December 7, 2016
- D-5 Discharge Clinical Summary from ■, ■, dated December 19, 2016

- D-6 Discharge Order Sheet from [REDACTED], [REDACTED], dated January 3, 2017
- D-7 IPE from [REDACTED], [REDACTED], MA, evaluation date June 17 and June 21, 2016
- D-8 Individualized Education Program (IEP) for the Appellant from [REDACTED] County Schools, dated September 19, 2016

Appellant's Exhibits

- A-1 Letter from [REDACTED] with attached medical and psychological documentation, dated September 20, 2017

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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's mother applied for the Title XIX I/DD Waiver Program on the Appellant's behalf.
- 2) Pursuant to the Appellant's application for the I/DD Program, her mother submitted several items of psychological and medical documentation. Those items were as follows:
 - an Independent Psychological Evaluation (IPE) from [REDACTED], Ed. D, dated June 30, 2017 (Exhibit D-3);
 - an IPE from [REDACTED] dated December 7, 2016 (Exhibit D-4);
 - a Discharge Clinical Summary from [REDACTED], dated December 19, 2016 (Exhibit D-5);
 - a Discharge Order from [REDACTED], dated January 3, 2017 (Exhibit D-6);
 - an IPE from [REDACTED], dated June 21, 2016 (Exhibit D-7); and
 - an Individualized Education Program (IEP) for the Appellant from [REDACTED] County Schools, dated September 19, 2016 (Exhibit D-8).
- 3) Based on the findings of the submitted documentation, the WV Department of Health and Human Resources (hereinafter referred to as the Department) determined that the Appellant was not medically eligible for the program because the "documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for [I/DD Program] eligibility," and issued a denial letter (Exhibit D-2) on July 31, 2017.
- 4) The denial letter (Exhibit D-2) specified that the Appellant's application and supporting documentation failed to demonstrate substantial limitations in the major life areas of self-

care, receptive or expressive language, learning, mobility and the capacity for independent living. According to the denial letter, the only major life area wherein the documentation demonstrated substantial limitations was in the area of self-direction.

- 5) The Appellant's representative, his mother, requested a fair hearing to protest the Department's denial of the Appellant's application.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.6.2, states that an individual who applies for I/DD Waiver Services must meet medical eligibility criteria in each of the three areas of diagnosis, functionality, the need for active treatment and the need for an ICF/IID Level of Care.

§513.6.2.1 states that 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.

§513.6.2.2 states that the applicant must have substantial deficits in at least three of the six major life areas identified as self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living. In order to have a deficit for the area of the capacity for independent living, the applicant must have deficits in at least three of six sub-categories, which are home living, social skills, employment, health and safety, community use and leisure activities. §513.6.2.2 further states that the presence of substantial deficits must be supported not only by the relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review.

§513.6.2.2 defines a substantial deficit as a standardized score 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.

DISCUSSION

According to the letter of denial for the I/DD program (Exhibit D-2), the Appellant's application was denied because the documentation submitted with the application did not "support the presence of substantial adaptive deficits in three or more of the six major life areas identified for [the I/DD Waiver Program] eligibility." The denial letter specifies that the documentation failed to demonstrate substantial limitations in the major life areas of self-care, receptive or expressive language, learning, mobility and the capacity for independent living. According to the denial letter, the documentation supports a substantial adaptive deficit only in the major life area of self-direction.

The Department's representative, the psychologist who evaluated the Appellant's I/DD Waiver program application, testified that for three separate Independent Psychological Evaluations,

psychologists administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to the Appellant. The Department's representative testified that the ABAS-3 is particularly relevant to an I/DD Waiver Program application in that it measures each of the six domains specified by the program policy, including the subdomains which comprise the domain of the capacity for independent living. She testified that for the most recent IPE, performed on June 30, 2017 (Exhibit D-3), the Appellant scored three standard deviations below the norm in one major life area, self-direction. She testified that for an IPE administered on December 7, 2016 (Exhibit D-4), the Appellant scored three standard deviations below the norm only in the area of social functioning, a sub-domain of the capacity for independent living. She stated that for an IPE administered on June 16 and June 21, 2016 (Exhibit D-7), the Appellant did not score three standard deviations below the norm in any domain or sub-domain on the ABAS-3.

The Appellant's representative, her pediatrician, testified that he could not argue against an arbitrary numerical score. He testified that if the Appellant scored a "4" and a "2" was needed, he could understand why the application was denied, but that this had no bearing on what the Appellant's true environmental, home life, educational functioning and self-care abilities were. He stated that a subjective score could change if the person providing the information knew exactly what arbitrary numbers were required in order to obtain a substantial deficit in a particular area of the ABAS-3.

The Department's representative testified that the numerical ratings obtained from the ABAS-3 were not subjective. She stated that the percentile rankings obtained through the ABAS-3 represented evaluations of a test subject's abilities to perform certain tasks properly and safely, which are then quantified by a test interpreter. She added that the ABAS-3 is a well-regarded psychological instrument, the results of which are verifiable and repeatable.

The Appellant's representative submitted as evidence a letter dated September 20, 2017 (Exhibit A-1), including his annotations to several of the pages of documentation submitted as evidence by the Department. In this letter, the Appellant's representative has offered his interpretations and observations particular to the functional abilities of self-care, learning and the capacity for independent living. He describes maladaptive behaviors on the part of the Appellant, such as running away from school, eating her own feces, threatening to kill a babysitter's son and verbalizing wishes to kill her father. The Appellant's representative further testified that the Appellant had turned off security alarms in her home so that she could run away, had police called to her home because of her, and needed constant supervision.

Although the Appellant's representative provided relevant information regarding the Appellant's extreme maladaptive behaviors, he did not provide evidence or testimony to refute the Department's position that the Appellant's application failed to demonstrate substantial limitations in three out of the six major life areas listed in policy.

CONCLUSION OF LAW

The Appellant's application for the Title XIX I/DD Waiver Program did not meet the policy requirement stated in Chapter 513.6.2.1, that documentation must demonstrate the applicant has

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. The Department acted correctly to deny the Appellant's application for the I/DD Waiver program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Appellant's application for the Title XIX I/DD Waiver Program.

ENTERED this 31st Day of October, 2017.

Stephen M. Baisden
State Hearing Officer