



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

November 9, 2017



RE: ██████████, A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 17-BOR-2297

Dear Mr. ██████████

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 PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 17-BOR-2297

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 September 21, 2017, on an appeal filed August 15, 2017.

The matter before the Hearing Officer arises from the July 31, 2017 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 his 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 July 31, 2017  |
| D-3 | Independent Psychological Evaluation (IPE) of the Appellant, evaluation date June 21, 2017 |
| D-4 | Psychological Evaluation, testing dates December 15, 2016, and December 29, 2016           |
| D-5 | Occupational Therapy Initial Examination Addendum, dated December 20, 2016                 |
| D-6 | SLP Initial Examination, dated November 16, 2016   |

- D-7            Daily Note from SLP, dated June 5, 2017  
D-8            Excerpts from Individualized Education Program forms regarding the Appellant, dated March 23, 2017, and May 15, 2017

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 July 31, 2017, which provided the basis for denial as follows:

Documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe.

- 5) The Appellant has been diagnosed with Autistic Disorder. (Exhibit D-3)
- 6) The severity of the Appellant's Autistic Disorder diagnosis was measured using the Childhood Autism Rating Scale (CARS2-ST), resulting in a score of 35, in the "mild to moderate" range of severity. (Exhibit D-3)
- 7) The severity of the Appellant's Autistic Disorder diagnosis was also measured using the Childhood Asperger Syndrome Test, and was classified as "ASD/Level One." (Exhibit D-4)
- 8) Ms. [REDACTED] testified that this designation is the least severe, and that "ASD/Level Three" would be the most severe category.

### **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 diagnostic eligibility is located at §513.6.2.1, and requires applicants to 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. Autism is listed as an example of a related condition which may constitute an eligible diagnosis, if that condition is severe and chronic.

### **DISCUSSION**

The Respondent denied the Appellant's application for the I/DD Waiver Program based on unmet medical eligibility. Medical eligibility for the program includes a diagnostic component. The Respondent must show, by a preponderance of the evidence, that the Appellant did not meet the medical eligibility requirement of an eligible diagnosis related to intellectual disability that is severe and chronic.

The Appellant was diagnosed with Autistic Disorder on a 2017 IPE. Test results indicate that this diagnosis did not meet the severity standard required for conditions related to intellectual disability. The severity of the Appellant's Autistic Disorder was assessed as "mild to moderate" using one instrument, and in the least severe of three categories using another instrument.

Without expert testimony or medical documentation to support a finding of a severe condition related to intellectual disability, the Appellant has not met the diagnostic component of medical eligibility, or medical eligibility for the I/DD Waiver Program in general. The Respondent was correct to deny the Appellant's application on this basis.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not "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," the diagnostic component of medical eligibility for the I/DD Waiver Program was not established.
- 2) Because the Appellant did not meet the diagnostic 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 November 2017.**

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**Todd Thornton  
State Hearing Officer**