



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241**

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

October 26, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2474

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2474

**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 ██████████. 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 October 12, 2017, on an appeal filed September 12, 2017.

The matter before the Hearing Officer arises from the July 11, 2017 decision by the Respondent to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by ██████████, Long-Term Care Clinical Consultant, PC&A/Bureau for Medical Services. The Appellant was represented by his mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated July 11, 2017
- D-3 Independent Psychological Evaluation dated June 22, 2017
- D-4 Notice of Decision dated July 19, 2016
- D-5 Information from ██████████, Ed.D, dated July 3, 2017
- D-6 ██████████ Admission History and Physical Examination report dated October 20, 2016
- D-7 ██████████ Admission Psychiatric Evaluation dated October 20, 2016

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) On July 11, 2017, the Appellant was notified (D-2) that his application for the I/DD Waiver Medicaid Program was denied because his condition does not meet required medical criteria for the program.
- 2) The Respondent concedes that the Appellant has a potentially eligible diagnosis for the program, but does not exhibit substantial delays in three (3) of the six (6) major life areas identified for I/DD Waiver eligibility.
- 3) The Respondent stipulated that only one (1) substantial adaptive deficit was identified for the Appellant - in the area of *learning* - based on the documentation submitted for review.
- 4) In order to qualify for the I/DD Waiver Program, applicants must have a score of one (1) or two (2) on the Adaptive Behavior Assessment System (ABAS) III (see Exhibit D-3). The Appellant received an eligible score of two (2) on the assessment in the area of functional academics (*learning*). It should be noted that the Appellant also received eligible scores in two (2) of the six (6) subcomponents considered when establishing a deficit in *capacity for independent living* – community use and health and safety – however, eligible scores are required in three (3) of the subdomains in order to establish substantial deficiency. The Appellant received scores of four (4) and above in the *capacity for independent living* subdomains of home living, leisure and social. No score was listed for the subdomain of work/employment. The Appellant received ineligible scores of six (6) in *self-care*; three (3) in *self-direction*; and six (6) in communication (*expressive and receptive language*). He was not found to be substantially deficient in the area of *mobility*, as Exhibit D-3 indicates that he ambulates without assistance. The Respondent contends that the scores are supported by narrative information contained in the documentation submitted for review (D-3, D-5, D-6 and D-7).
- 5) The Appellant's mother testified that the Appellant has special needs and could benefit from the I/DD Waiver Program.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6.2 (D-1) state:

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, 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 disabilities 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 disabilities.

Additionally, the applicant who has the 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*.

West Virginia Medicaid Regulations, Chapter 513.6.2.2 (D-1) - An individual who applies for I/DD Waiver Services must have substantial adaptive deficits in three out of six identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction* and *capacity for independent living*. *Capacity for independent living* includes six sub-domains: home living, social skills, employment, health and safety, community and leisure activities.

Substantial deficits are defined as standardized scores of three (3) 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 75th percentile when derived from I/DD normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. 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.

DISCUSSION

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria.

While the Appellant has a potentially eligible diagnosis for the I/DD Waiver Program, documentation fails to confirm that he demonstrates substantial adaptive deficits in three (3) of the six (6) major life areas identified for Waiver eligibility.

Based on information provided during the hearing, medical eligibility for participation in the I/DD Waiver Program has not been established.

CONCLUSIONS OF LAW

The Respondent's decision to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program is affirmed.

DECISION

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

ENTERED this 26th Day of October 2017.

Pamela L. Hinzman
State Hearing Officer