



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901**

**Jim Justice  
Governor**

**Bill J. Crouch  
Cabinet Secretary**

February 1, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2871

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, Bureau for Medical Services

\_\_\_\_\_ ,

**V.**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

## DECISION OF STATE HEARING OFFICER

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 January 26, 2017, on an appeal filed October 18, 2016.

At the hearing, the Respondent appeared by [REDACTED], consulting psychologist for the Bureau for Medical Services. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED], the Appellant's legal guardian and [REDACTED], Director of Vocation Services for [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

D-1 Bureau for Medical Services Provider Manual §513.6  
D-2 Notice of Denial dated September 30, 2016  
D-3 Notice of Denial dated September 30, 2016 – Amended  
D-4 Independent Psychological Evaluation dated September 21, 2016  
D-5 Psychological Evaluation dated March 31, 2015  
D-6 Independent Psychological Evaluation dated March 6, 2012  
D-7 Application for Subsidized Guardianship dated March 31, 2009  
D-8 Individualized Education Plan dated February 6, 2015

**Appellant's Exhibits:**

A-1 Neuropsychological Evaluation dated January 11, 2017

A-2 Correspondence from [REDACTED], [REDACTED]

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 applied for services under the I/DD Waiver Program.
- 2) The Respondent issued a Notice of Denial (D-1) on September 30, 2016, advising the Appellant that her application had been denied as she did not meet the functionality criteria required for I/DD Waiver services.
- 3) The Respondent did not dispute that the Appellant had an eligible diagnosis of mild Intellectual Disability, meeting the diagnostic criteria for program eligibility.
- 4) The Respondent acknowledged that the Appellant was demonstrating substantial adaptive deficits in the major life areas of self-direction and capacity for independent living.
- 5) No other substantial adaptive deficits were identified from the documentation submitted with the Appellant's application.

**APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that in order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality, need for active treatment, and requirement of ICF/IID Level of Care criteria.

**Diagnosis**

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, may 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 disability 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 disability.

Additionally, the applicant who has a 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**

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined 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, or the average range or equal to or below the 75 percentile when derived from MR normative populations when mental retardation has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

### **DISCUSSION**

Bureau for Medical Services policy requires that an individual must meet the diagnostic, functionality, need for active treatment, and requirement of ICF/IID Level of Care criteria to qualify for services under the I/DD Waiver program.

The Appellant has a diagnosis of mild Intellectual Disability that meets the diagnostic criteria as found in policy.

To meet the functionality criteria, an individual must demonstrate substantial adaptive deficits in at least three (3) of the six (6) major life areas. A substantial adaptive deficit is identified by test scores of less than one percentile. Test scores must be supported by narrative descriptions of the individual's abilities.

The Appellant's representative contended the Appellant had substantial adaptive deficits in the areas of learning and receptive/expressive language.

The Appellant was administered the Adaptive Behavior Assessment Scale, Third Edition (ABAS-III), a test that measures an individual's adaptive behaviors, during the Independent Psychological Evaluation (IPE) in September 2016. The Appellant had eligible scores of less than one percentile in the areas of functional academics (learning) and communication (receptive/expressive language).

The Respondent's witness, [REDACTED], testified that the scores obtained from the ABAS-III contradict the Appellant's actual abilities when compared to the narrative descriptions from the IPE and other tests administered to the Appellant in the areas of learning and receptive/expressive language.

The Appellant was given the Wide Range Achievement Test, Fourth Edition (WRAT-4), a test that measures an individual's basic skills in reading, spelling and mathematics, during the September 2016 IPE. A score of less than one percentile on this test would be a standard score of 55 or below. The Appellant did not have any eligible scores from the WRAT-4.

Ms. [REDACTED] referred to the Appellant's Individual Education Plan from February 2015. It was noted that the Appellant had no communication needs or need for assistive devices to communicate, and that she could read aloud and write in complete sentences.

Based on the documentation and testimony provided, substantial adaptive deficits in the areas of learning and receptive/expressive communication could not be identified. The documentation submitted with the Appellant's application for services did not support that the Appellant met the criteria of a substantial adaptive deficit in the contested major life areas.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that the diagnostic, functionality and need for active treatment criteria, and a requirement of ICF/IID Level of Care must be met to establish medical eligibility for the I/DD Waiver program.
- 2) The Appellant met the diagnostic criteria for program eligibility.
- 3) Policy requires that for the functionality criteria to be met, the applicant must be demonstrating at least three (3) substantial adaptive deficits of the six (6) major life areas

as determined by standardized test scores which must also be supported by the narrative descriptions contained in the documentation submitted for review.

- 4) The Appellant was found to have eligible test scores in the areas of self-direction and capacity for independent living.
- 5) Substantial adaptive deficits could not be identified in the areas of learning and receptive/expressive language, as the documentation submitted did not support that the Appellant was substantially delayed in these areas as defined by policy.
- 6) Whereas the documentation submitted failed to establish that the Appellant met the functionality criteria required by policy for participation in the I/DD Waiver program, medical eligibility was not met.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Appellant's application for services under the I/DD Waiver program.

**ENTERED this 1<sup>st</sup> day of February 2017**

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**Kristi Logan**  
**State Hearing Officer**