



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 21, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-3137

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  
[REDACTED]

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

██████████,

**Appellant,**

**v.**

**Action Number: 16-BOR-3137**

**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 February 16, 2017, on an appeal filed December 7, 2016.

The matter before the Hearing Officer arises from the November 29, 2016, decision by the Respondent to terminate the Appellant's services under the I/DD Waiver program.

At the hearing, the Respondent appeared by ██████████, consulting psychologist for the Bureau for Medical Services. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Residential Coordinator for ██████████ and ██████████, Waiver Program Manager for ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Medicaid Provider Manual §513.7
- D-2 Notice of Termination dated November 29, 2016
- D-3 Independent Psychological Evaluation dated November 10, 2016
- D-4 Comprehensive Psychological Evaluation dated September 8, 2010
- D-5 Psychological Evaluation Update dated July 5, 2011
- D-6 Notice of Termination dated September 19, 2016
- D-7 Inventory for Client and Agency Planning dated August 17, 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) The Appellant underwent an annual functional assessment to determine continued medical eligibility for services under the I/DD Waiver program on August 17, 2016 (D-7).
- 2) The Appellant was found to demonstrate substantial adaptive deficits in the major life areas of learning and capacity for independent living.
- 3) A Notice of Termination was issued on September 19, 2016, advising the Appellant that she no longer met the functionality criteria to continue receiving services under the I/DD Waiver program (D-6).
- 4) The Appellant had an Independent Psychological Evaluation completed on November 10, 2016 (D-3).
- 5) The Appellant was given diagnoses of borderline intellectual functioning and unspecified depressive disorder (D-3). No substantial adaptive deficits in any of the major life areas were identified from the evaluation.
- 6) A second Notice of Termination was issued on November 29, 2016, advising the Appellant that she no longer met the diagnostic criteria to continue receiving services under the I/DD Waiver program.
- 7) The Appellant and her representatives contended that she continued to require the level of care provided by the I/DD Waiver program.

### **APPLICABLE POLICY**

Bureau for Medical Services Medicaid Provider Manual §§513.7 and 513.7.1 states that in order for a person to be re-determined eligible, the person must continue to meet all the eligibility criteria (both medical and financial) and continue to have deficits in at least three (3) of the six (6) identified major life areas, as previously defined. Redetermination of medical eligibility must be completed at least annually.

At a minimum, annual redetermination of eligibility will include one annual functional assessment which includes a structured interview as well as standardized measures of adaptive behavior in the six major life areas.

Bureau for Medical Services Provider Manual §513.6.2 In order to be eligible to receive IDDW Program Services, an applicant must meet the medical eligibility criteria in each of the following categories:

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

## **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.

### **Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## **DISCUSSION**

Recipients of I/DD Waiver services are required to undergo an annual functional assessment to determine continued medical eligibility for the program. The Appellant's August 2016 annual functional assessment revealed that she only was demonstrating substantial adaptive deficits in the major life areas of learning and capacity for independent living. Policy requires the presence of at least three substantial adaptive deficits to meet the functionality criteria.

The Respondent's witness, [REDACTED], testified that the Appellant met the diagnostic criteria when she first applied for Waiver services in 2010 with a diagnosis of mild intellectually disability. The Appellant's full-scale IQ score was 66 in 2010. When the Appellant had her annual functional assessment in August 2016, the previous diagnosis of mild intellectual disability was accepted and only the Appellant's functional abilities were reviewed. Ms. [REDACTED] noted that an individual may have an IQ score lower than their actual intellectual abilities, but an individual cannot score higher on an IQ test than their abilities allow.

When the initial denial was issued in September 2016, the Appellant requested and received a second psychological evaluation, which was conducted in November 2016. It was with the results of this second evaluation that the Respondent determined the Appellant no longer met the diagnostic criteria.

The Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-4) administered to the Appellant as part of the Independent Psychological Evaluation in November 2016 resulted in a full-scale Intelligence Quotient (IQ) score of 70, placing the Appellant in the borderline range of intellectual functioning.

The Wide Range Achievement Test, Fourth Edition (WRAT-4) administered to the Appellant in November 2016 yielded test scores of a 63 in word reading, 71 in spelling and a 56 in math computation. The mean for this test is 100 and three standard deviations below the mean would be a score of 55 or below. The Appellant did not have eligible scores from this test to support a substantial deficit in learning.

The Appellant did not have any eligible scores from the Adaptive Behavior Assessment Scale, Third Edition (ABAS-3), administered in November 2016. Eligible scores for this test would be a 1 or 2. The Appellant's scores ranged from low/average to average/above average range.

The Appellant's witnesses argued that the Appellant has an eligible diagnosis of intellectual disability and contended that policy does not stipulate that the diagnosis of an intellectual disability be severe. The Appellant's witnesses testified that the Appellant has only improved due to constant support from staff members and that she is unable to live independently in the community.

Policy does not specify that the diagnosis of intellectual disability be classified as severe, only that a related condition that is closely related to intellectual disability be considered severe. Policy requires that a recipient must continue to demonstrate substantial adaptive deficits in at least three of the six major life areas as measured by standardized test scores. The tests administered to the Appellant in August 2016 and November 2016 failed to establish that the Appellant had substantial adaptive deficits in a least three of the major life areas.

The Appellant no longer meets the functionality criteria to continue receiving services under the I/DD Waiver program.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an I/DD Waiver recipient must be reevaluated annually and continue to have substantial adaptive deficits in at least three of the six major life areas.
- 2) The Appellant was not demonstrating substantial adaptive deficits in any of the six major life areas when evaluated in November 2016.
- 3) The Appellant no longer meets the functionality criteria to continue receiving services under the I/DD Waiver program.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's services under the I/DD Waiver program.

**ENTERED this 21<sup>st</sup> day of February 2017**

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**Kristi Logan  
State Hearing Officer**