



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

March 10, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3160

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,

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
[REDACTED]

_____ ,

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 December 12, 2016.

At the hearing, the Respondent appeared by [REDACTED]. The Appellant appeared *pro se*, by his guardian [REDACTED]. Sarah Clendenin observed the hearing but did not participate. All witnesses were sworn and the following documents were admitted into evidence.

D-1	Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services (excerpt)
D-2	Notice of denial, dated November 4, 2016
D-3	Psychological Evaluation of the Appellant, evaluation date October 5, 2016
D-4	Psychoeducational Assessment Integrated Report, assessment date November 8, 2012
D-5	Letter regarding the Appellant from [REDACTED], Ph. D., dated July 8, 2007
D-6	Psychological Evaluation of the Appellant, interview dates May 17, June 19, and July 5, 2007

- D-7 Psychology Intake regarding the Appellant, interview date May 17, 2007
(with assorted clinical notes)
- D-8 Individualized Education Program (IEP) of Appellant, dated May 16, 2016

Appellant's Exhibits:

None

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 [REDACTED] to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) [REDACTED], a licensed psychologist with [REDACTED], made the eligibility determination regarding the Appellant.
- 4) The Respondent denied the Appellant's application based on unmet medical eligibility and issued a notice (Exhibit D-2) dated November 4, 2016, indicating the denial reasons as unmet diagnostic eligibility and unmet functionality.
- 5) Regarding diagnostic eligibility, the denial notice (Exhibit D-2) reads, "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. Asperger's Disorder is not considered to be an eligible diagnosis because it is not associated with intellectual disability and typically does not result in the types of adaptive deficits manifested in people with intellectual disability."
- 6) Regarding functionality, the denial notice (Exhibit D-2) reads, "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility" and specifies the Appellant only demonstrated a substantial limitation in the area of *Self-Care*.
- 7) The Appellant was diagnosed with Asperger's Syndrome. (Exhibit D-3)
- 8) Asperger's Syndrome is not an eligible diagnosis for the I/DD Waiver Program.

- 9) The psychological evaluation of the Appellant includes the results of his adaptive behavior testing, utilizing the Adaptive Behavior Assessment System (ABAS). (Exhibit D-3)
- 10) The ABAS produces scores with a mean of ten (10) and a standard deviation of three (3). Scores of one (1) or two (2) are indicative of a substantial adaptive deficit in a major life area.
- 11) The Appellant only has a score indicative of a substantial adaptive deficit in the skill area and corresponding major life area of *Self Care*. (Exhibit D-3)

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 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. Related conditions must be found to be closely related to intellectual disabilities because they result 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.

The policy regarding functionality is located at §513.6.2.2, and requires the applicant to have substantial deficits in at least three of six identified major life areas: self-care, receptive or expressive language (communication), learning (functional academics), mobility, self-direction and the capacity for independent living. The policy defines substantial deficits 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...”

DISCUSSION

The Respondent denied the Appellant’s application for the I/DD Waiver Program based on unmet medical eligibility. The Respondent must show, by a preponderance of the evidence, that the Appellant did not meet medical eligibility requirements.

Medical eligibility requirements for the I/DD Waiver Program includes both diagnostic eligibility and a functionality requirement. The Appellant did not meet either requirement.

The Appellant has a diagnosis of Asperger's Syndrome, but this is not an eligible diagnosis for the program. The Respondent's expert testimony established that this diagnosis does not constitute a condition closely related to intellectual disability in the elements of impairment and required services set by policy. For this reason the Appellant did not meet the diagnostic requirement for medical eligibility.

The Appellant did not meet the functionality requirement for medical eligibility because he did not have substantial deficits, as defined by policy, in at least three of the six major life areas. Only one of the Appellant's standardized scores was in the range of three standard deviations below the mean or less than one percentile using the ABAS tool for measuring adaptive behavior.

Without diagnostic eligibility or the functionality requirement, the Appellant does not meet medical eligibility requirements and the Respondent was correct to deny his application for the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires a diagnosis of either intellectual disability or a related condition. Policy further requires related conditions to be closely related to intellectual disability in terms of the level of impairment and the required services. Because the Appellant's diagnosis is not "closely related" to intellectual disability in terms of these elements, the diagnostic component could not be established.
- 2) Because the Appellant did not have eligible standardized scores from an instrument used to measure substantial deficits in at least three of the six major life areas identified in I/DD Waiver Program policy, the functionality component could not be established.
- 3) Because the Appellant did not meet the diagnostic and functionality requirements, 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 March 2017.

Todd Thornton
State Hearing Officer