



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

January 17, 2019

[REDACTED]

RE: [REDACTED], a PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.:18-BOR-2646

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: Psychological Consultation and Assessment
KEPRO

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

■■■■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 18-BOR-2646

**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 January 9, 2019, on an appeal filed on October 26, 2018.

The matter before the Hearing Officer arises from the September 27, 2018, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her guardian, ■■■■, Adult Protective Services Worker. Appearing as a witness was ■■■■, Adult Protective Services Supervisor. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated September 27, 2018
- D-3 Independent Psychological Evaluation dated August 30, 2018
- D-4 Notice of Denial dated March 16, 2018
- D-5 Independent Psychological Evaluation dated February 23, 2018
- D-6 Psychological Evaluation dated April 18, 2011
- D-7 Wechsler Individual Achievement Test, Third Edition Clinician Report dated December 28, 2011

- D-8 Request for Assignment of Surrogate Parent and Individualized Education Program Report dated October 15, 2014, and Record of Suspension/Incident Report dated November 20, 2013 from ██████ County Schools
- D-9 Evaluation Report of Licensed Physician/Psychologist dated February 20, 2014
- D-10 Evaluation Report of Licensed Physician/Psychologist dated May 27, 2016
- D-11 Notice of Denial dated August 19, 2014

Appellant’s Exhibits:

- A-1 Psychological Evaluation dated October 12, 2018

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 on March 16, 2018, advising that the Appellant’s application had been denied as she did not have an eligible diagnosis of Intellectual Disability or related condition and did not have at least three (3) substantial adaptive deficits of the six (6) major life areas (Exhibit D-4).
- 3) The Appellant requested and was granted a second psychological evaluation to determine medical eligibility for I/DD Waiver services.
- 4) The Respondent issued a second Notice of Denial on September 27, 2018, advising that the Appellant’s application had been denied as she did not have an eligible diagnosis of Intellectual Disability or related condition that manifested during the developmental period and did not have at least three (3) substantial adaptive deficits of the six (6) major life areas related to an eligible diagnosis (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver 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, 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 75th percentile when derived from intellectual disability (ID) normative populations when ID 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

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of intellectual disability or related condition which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care.

To meet the diagnostic criteria for Waiver eligibility, an applicant must have a diagnosis of intellectual disability, which is severe and which manifested prior to age 22. Standardized scores are used to identify substantial adaptive deficits in the major life areas to meet the functionality criteria. A substantial adaptive deficit is defined as three (3) standard deviations below the mean, or average score.

An Independent Psychological Evaluation (IPE) was conducted in February 2018 as part of the initial application for Waiver services, when the Appellant was 21 years old. The Appellant was diagnosed with borderline intellectual functioning, with a full-scale Intelligence Quotient (IQ) of 75, and schizoaffective disorder. The Wide Range Achievement Scale (WRAT) that was administered in February 2018 yielded low-average scores, with the Appellant's lowest score of a 66 in math computation. The mean of this test is a 100, and three (3) standard deviations below the mean is a score of 55 or less.

The Adaptive Behavior Assessment System (ABAS-III) administered in February 2018 has a mean of 10, with eligible scores of three standard deviations below the mean as a score of a 1 or 2. The Appellant received a score of 1 in functional academics (learning), a 1 in health and safety, and a 2 in community use, both of which are sub-components of the major life area of capacity for independent living.

The second IPE was conducted in August 2018, when the Appellant was 22 years old. The Appellant was diagnosed with mild intellectually disability and schizoaffective disorder. The WRAT administered in August 2018 resulted in similar scores for the Appellant as those from February 2018, a score of 66 in math computation as the Appellant's lowest score. The results of

the ABAS-III given in August 2018 were much lower than previously, with scores of 1 in the areas of functional academics, home living, health and safety, self-care and self-direction.

The Respondent's witness, Kerri Linton, testified to the denial of the Appellant's application for Waiver services. According to a psychological evaluation from April 2011, the Appellant's IQ was 73, with diagnoses of oppositional defiant disorder, mood disorder and parent-child relational problem. Ms. Linton pointed out that in 2011, at the age of 15, the Appellant had yet to be diagnosed with an intellectual disability. A psychological evaluation conducted with the Appellant in May 2016, when the Appellant was 20 years old, documented the Appellant's IQ as 82, with diagnoses of borderline intellectual functioning and bipolar disorder. The February 2018 evaluation documented borderline intellectual functioning. Ms. Linton testified that it was not until the Appellant had surpassed the age of 22 that a diagnosis of intellectual disability was given.

Ms. Linton testified that the Appellant has a history of mental illness and opined that the Appellant may be experiencing a decline in intellectually functioning due to the mental illness and the psychotropic medications she is prescribed. The information submitted to the Respondent with the Appellant's application documented the Appellant's behaviors are associated with mental illness, rather than an intellectually disability.

The Appellant's guardian contended that the Appellant has experienced a decline in her abilities in the last two (2) years and she is unable to live independently. The Appellant is currently in need of placement that will give her 24-hour supervision for her own safety.

Policy requires than an individual have a diagnosis of an intellectually disability prior to the age of 22. Mental illness is specifically excluded in policy as an eligible diagnosis for Waiver services.

Based on the testimony and information submitted, the Appellant did not have an eligible diagnosis of intellectual disability prior to the age of 22. While the decline in the Appellant's adaptive behaviors and intellectual functioning is evident in the psychological evaluations that were conducted once the Appellant attained the age of 22, the Appellant did not meet the diagnostic or functionality criteria during the developmental period.

Whereas the Appellant did not meet the diagnostic or functionality criteria during the developmental period, the Respondent acted in accordance with policy to deny her application for I/DD Waiver services.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic, functionality, need for active treatment criteria and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) To meet the diagnostic criteria, the applicant must have been diagnosed with an intellectual disability during the developmental period, prior to age 22.

- 3) The documentation submitted failed to establish that the Appellant had a diagnosis of an intellectual disability prior to age 22.
- 4) The Appellant does not meet the medical eligibility criteria for I/DD Waiver services.

DECISION

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

ENTERED this 17th day of January 2019.

**Kristi Logan
State Hearing Officer**