



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
PO Box 1247
433 MidAtlantic Parkway
Martinsburg, WV 25402**

**Jolynn Marra
Interim Inspector General**

March 18, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:20-BOR-1055

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1055

**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 March 4, 2020, on an appeal filed January 13, 2020.

The matter before the Hearing Officer arises from the January 2, 2020 decision by the Respondent to deny the Appellant's application for services under the Intellectual and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by his mother, ██████████. Appearing as a witness for the Appellant was ██████████ with the Autism Training Center at ██████████. 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 (excerpt)
- D-2 Notice of Denial, dated January 2, 2020
- D-3 Independent Psychological Evaluation (IPE) by Dr. ██████████, evaluation dates November 18, 2019 and December 14, 2019
- D-4 Individualized Education Program ██████████, dated August 20, 2019
- D-5 Notice of Denial, dated April 11, 2019
- D-6 Independent Psychological Evaluation (IPE) by ██████████, evaluation date April 3, 2019
- D-7 Notice of Denial, dated March 12, 2019
- D-8 Independent Psychological Evaluation (IPE) by ██████████, evaluation date January 15, 2019

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 is an 18-year-old who has a diagnosis of Autism Spectrum Disorder (ASD), Level II with features of Asperger's Disorder, Social Anxiety Disorder (SAD), Oppositional Defiant Disorder (ODD), Disruptive Mood Dysregulation Disorder, Selective Mutism, Posttraumatic Stress Disorder (PTSD), Attention Deficit Disorder (ADD), combined inattentive and impulsive, and developmental coordination disorder: fine motor writing (dysgraphia). (Exhibits D-3, D-6, and D-8)
- 2) On June 26, 2019, a decision was entered by this Hearing Officer upholding the Respondent's April 11, 2019 denial for services under the I/DD Waiver program based upon the Appellant not having an eligible diagnosis of either intellectual disability or a related condition which is severe. (See, Decision of State Hearing Officer, 19-BOR-1604)
- 3) On January 2, 2020, the Respondent denied a subsequent application for I/DD Waiver program benefits based upon the Appellant not having an eligible diagnosis of either intellectual disability or a related condition which is severe. (Exhibit D-2)
- 4) Kerri Linton, a licensed psychologist contracted by the Bureau for Medical Services, reviewed the Appellant's application and supporting documentation for both applications.
- 5) The Appellant's test scores and narratives indicate that he is functioning intellectually in the high average range. (Exhibit D-3)
- 6) The Appellant's ASD does not meet the severity criteria needed to establish program eligibility.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, in part, states that to be medically eligible to receive I/DD Waiver Program Services, an applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. Additionally, 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.

Bureau for Medical Services Provider Manual §513.6.2.1, *Diagnosis*, explains that 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.

DISCUSSION

Pursuant to policy, an individual must first meet the medical eligibility criteria of a diagnosis of an 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 for I/DD Waiver program eligibility.

The Appellant had a hearing on June 12, 2019, held in front of this Hearing Officer regarding a previous application denial, in which the Respondent's denial was upheld. Ms. Linton reviewed both the current and the previous 2019 applications and their supporting documentation. Although the current application included a new IPE administered by Dr. [REDACTED], Ms. Linton did not find that the Appellant met the diagnostic criteria for program eligibility in reviewing the test scores and narratives. Ms. Linton concluded that the Appellant's diagnosis of ASD, Level II, does not rise to the severity required to meet program eligibility.

The Appellant's mother, [REDACTED], acknowledged that the Appellant does have average to high intellectual ability, but contended that due to his ASD, his intellect and functionality were diminished. That is, Ms. [REDACTED] averred that the Appellant's ASD impedes his high intellect. Ms. [REDACTED] maintained that the Appellant has deficits in all functionality areas except for mobility and learning.

Ms. Linton stated that the Appellant's functionality deficits were not the result of cognitive limitations, but rather the result of his ODD and anxiety disorder combined with other mental disorders evidenced by the Appellant's long history of emotional outbursts and attention problems and the submitted documentation. In reviewing the IPE narrative, Ms. Linton noted that the is able to take out the trash and get the mail but refuses to do outside chores. The IPE narrative indicated that the Appellant refuses to shower or comb his hair, but he can dress himself, feed himself, and can even cook hotdogs in the microwave. The IPE narrative also indicates that the Appellant often spends his time online computer gaming and reads. However, he refuses to write and has selective muteness, even though he can communicate with clear verbal language when he chooses to do so. Thus, Ms. Linton concluded in evaluating the test scores, narratives and documentation, the Appellant's ASD, Level II, is not severe and chronic, and therefore does not meet program eligibility.

The preponderance of evidence showed that the Appellant does not meet the diagnostic criteria as defined by policy for medical eligibility in the I/DD Waiver program. The Respondent's denial of the Appellant's I/DD Waiver application is affirmed.

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 diagnosis criteria, an applicant must have been diagnosed with an 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.
- 3) The testimony and documentation submitted did not establish that the Appellant's diagnosis of Autism Disorder is a related condition which is severe and chronic in nature.
- 4) The Appellant does not meet the medical criteria for I/DD Waiver eligibility.

DECISION

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

ENTERED this 18th day of March 2020.

Lori Woodward, State Hearing Officer