



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
PO Box 1247
433 MidAtlantic Parkway
Martinsburg, WV 25402**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

March 30, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:20-BOR-1112

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-1112

**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 18, 2020, on an appeal filed January 27, 2020.

The matter before the Hearing Officer arises from the January 15, 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 her mother, ██████████. Appearing as a witness for the Appellant was her grandmother, ██████████. 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 15, 2020
- D-3 Independent Psychological Evaluation (IPE), evaluation date January 8, 2020
- D-4 Notice of Denial, dated January 19, 2016
- D-5 Notice of Denial, dated January 11, 2019
- D-6 Independent Psychological Evaluation (IPE), evaluation date November 25, 2019
- D-7 Individualized Education Program ██████████ County Schools Administrative, amended review date August 23, 2018
- D-8 ██████████ – Pharmacological Management, Session Information, dated September 16, 2019

- D-9 [REDACTED] – Pharmacological Management,
Session Information, dated December 11, 2019
- D-10 [REDACTED] – Pharmacological Management,
Client DSM Diagnosis, dated December 11, 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 a 19-year-old who has a diagnosis of Autism Spectrum Disorder (ASD), Level II. (Exhibits D-3 and D-6)
- 2) On January 15, 2020, the Respondent denied the Appellant's application for the I/DD Waiver Program due to the Appellant not having an eligible diagnosis of either intellectual disability or a related condition which is severe, and because the submitted documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. (Exhibit D-2)
- 3) Kerri Linton, a licensed psychologist contracted by the Bureau for Medical Services, reviewed the Appellant's application and supporting documentation.
- 4) As part of her I/DD Waiver application, the Appellant underwent an IPE on November 25, 2019, and then a second IPE on January 8, 2020. (Exhibits D-3 and D-6)
- 5) The Appellant's IPE test scores and narratives indicate that she is functioning intellectually in the average range of ability. (Exhibit D-3)
- 6) The Appellant showed a substantial limitation in the major life area of Self-Care. (Exhibit 2)
- 7) No other substantial adaptive deficits were established in any of the other major life areas as required by policy.
- 8) 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

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet all four criteria required by policy: diagnosis, functionality, need for active treatment, and requirement of ICF/IDD Level of Care.

The Appellant is a 19 year-old who graduated from high school last year with a standard diploma. The Appellant underwent an IPE on November 25, 2019, and then a second IPE on January 8, 2020, as part of her application for the I/DD Waiver program.

Kerri Linton, consulting psychologist for the Respondent, testified that based on the submitted documentation she reviewed, including the November 2019 and January 2020 IPEs, the Appellant does not have an Intellectual Disability which is considered severe. The Wechsler Adult Intelligence Scale-Fourth Addition (WAIS-4), which measures intellectual functioning, showed the Appellant's Full Scale IQ is 92 (November 2019) and 95 (January 2020). Ms. Linton explained these scores showed that the Appellant is functioning within an average level of intellect. As a point of reference, Ms. Linton explained that individuals who generally qualify for this program have IQ scores of 55 and below.

Ms. Linton reviewed the Gilliam Autism Rating Scale-Third Edition (GARS-3) results in examining whether the Appellant's diagnosis of Autism met the level of severity so as to be considered an eligible diagnosis. The GARS testing was administered in the January 2020 and November 2019 IPEs. The Appellant received a scaled score of 96 in the Autism Index on the November 2019 test and a scaled score of 87 in the Autism Index on the January 2020 test. Ms. Linton explained that the Appellant's results indicated the very likely probability of Autism Spectrum Disorder at Level 2. To be considered severe as required by policy, Ms. Linton explained that an individual must be at a Level 3.

The Appellant's level of functionality was also reviewed. The presence of at least 3 substantial adaptive deficits in the 6 major life areas identified for program eligibility must be found to meet the functionality criteria. Substantial adaptive deficits are defined by standardized test scores of 3 standard deviations below the mean or less than one percentile when compared to the normative population. Scaled scores of 1 and 2 are considered eligible scores for this testing. Standardized test scores must be supported by the narrative descriptions of an individual's abilities.

The Adaptive Behavior Assessment-Third Edition (ABAS-3) was reviewed by Ms. Linton. She found that although the Appellant received a scaled score of 1 in the Functional Academics category, it did not reflect the scores she received in the Achievement testing (Wide Range Achievement Test-Fifth Edition (WRAT-5)), wherein the Appellant received above average scores. Additionally, the narrative did not support this low score in Functional Academics. Therefore, the Appellant was not found to have a substantial limitation in this category.

In reviewing the other eligible scores in the ABAS-3, Ms. Linton noted that the Appellant did have qualifying scores in the Capacity for Independent Living (CIL) subcategories of Leisure and Home Living; however, policy requires deficits in at least three out of the six subcategories of CIL. The Appellant did demonstrate a substantial limitation in the major life area of Self-Care.

Ms. Linton concluded after reviewing the IPE test scores and accompanying narratives, that the Appellant did not meet the diagnostic or functionality criteria for I/DD Waiver program eligibility.

The Appellant's mother, [REDACTED], stated that the Appellant is unable to keep a job due to her behavioral issues. Ms. [REDACTED] testified that the Appellant screams and makes "weird" sounds

and the employers ask her to leave due to her behavior. The November and January IPEs did not evaluate this subcategory of CIL, noting “not applicable”. Ms. Linton did, however, review the January 2020 IPE stating that the narrative noted that the Appellant is “able to follow 1-2 step directions ... has a basic understanding of the concept of money and reportedly can make change and make simple purchases with supervision.” Even if there was a finding of a substantial limitation in the Employment subcategory of CIL, the Appellant would only have two of the necessary three substantial adaptive deficits in the major life areas identified for Waiver eligibility.

Whereas, the Appellant does not meet the diagnosis or functionality criteria for program eligibility, 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 to meet the diagnostic criteria for I/DD Waiver Program eligibility.
- 4) The Appellant has a substantial limitation in only one of the required six major life areas for program eligibility.
- 5) 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 30th day of March 2020.

Lori Woodward, State Hearing Officer