



**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**

March 25, 2020



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.:20-BOR-1288

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
Bureau for Medical Services

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

██████, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 20-BOR-1288

**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 March 11, 2020, on an appeal filed January 15, 2020.

The matter before the Hearing Officer arises from the October 23, 2019, 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, consultation psychologist for the Bureau for Medical Services. The Appellant appeared by her guardian, ██████, Adult Protective Services Worker for the Department of Health and Human Resources. Appearing as witnesses for the Appellant were ██████, Service Coordinator, ██████; ██████, Behavior Support Professional, ██████; ██████, Director, ██████; ██████, Home Manager, ██████; and ██████, Behavior Support Professional, ██████. 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 October 23, 2019
- D-3 Independent Psychological Evaluation dated October 2, 2019
- D-4 Notice of Denial dated August 5, 2019
- D-5 Independent Psychological Evaluation dated July 19, 2019
- D-6 Comprehensive Psychological Evaluation dated May 20, 2016
- D-7 Psychological Evaluation dated October 12, 2018

- D-8 Correspondence from [REDACTED], Service Coordinator with [REDACTED]
- D-9 Consumer Profile from [REDACTED] dated May 14, 2019 and Crisis Plan dated June 2019
- D-10 Individualized Program Plan dated June 25, 2019
- D-11 Notice of Prior Approval IFC/IID Eligibility dated June 4, 2019
- D-12 Summary of Adult Needs and Strength Assessment dated January 18, 2019
- D-13 Pre-Hearing Memorandum dated June 5, 2019
- D-14 Student Transcript from 2005 through 2011 from [REDACTED]
- D-15 Individualized Education Program dated October 15, 2014
- D-16 Record of Suspension dated November 20, 2013
- D-17 Incident Summary dated November 20, 2013
- D-18 Clinician Report of Weschler Individual Achievement Test, Third Edition dated December 28, 2011
- D-19 Psychological Evaluation dated April 18, 2011
- D-20 Notice of Denial dated September 27, 2018
- D-21 Independent Psychological Evaluation dated August 30, 2018
- D-22 Notice of Denial dated March 16, 2018
- D-23 Independent Psychological Evaluation dated February 23, 2018
- D-24 Notice of Denial dated August 19, 2014
- D-25 Psychological Evaluation dated July 29, 2014

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 in 2018 at age twenty-two (22).
- 2) The Appellant's application was denied as there was no documented diagnosis of an Intellectual Disability or related condition that manifested during the developmental period, prior to age 22 (Exhibit D-20).
- 3) In June 2019, the Appellant received prior approval for ICF/IID services based on documentation that established the presence of an Intellectual Disability that manifested prior to age 22 (Exhibit D-11).
- 4) The Appellant reapplied for services under the I/DD Waiver Program in 2019.
- 5) The Respondent issued a Notice of Denial on August 5, 2019, advising that the Appellant's application had been denied as she did not have an eligible diagnosis of Intellectual Disability or related condition that is severe and the documentation submitted did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas (Exhibit D-4).

- 6) The Appellant requested and was granted a second psychological evaluation to determine medical eligibility for I/DD Waiver services (Exhibit D-3).
- 7) The Respondent issued a second Notice of Denial on October 23, 2019, advising that the Appellant's application had been denied as she did not have an eligible diagnosis of Intellectual Disability which is severe (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 §511.2.3 state that to be eligible to receive I/DD Waiver Program Services and ICF/IID 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 receive services under the I/DD Waiver Program. The medical eligibility criteria for ICF/IID approval is the same as for I/DD Waiver approval.

To meet the diagnostic criteria for Waiver eligibility, an applicant must have a diagnosis of Intellectual Disability or related condition, which is severe, and which manifested prior to age 22. Policy further states that a related condition may be any condition, other than mental illness, that results in impairment of intellectual functioning or adaptive behavior similar to that of intellectually disabled individuals.

The initial Independent Psychological Evaluation (IPE) for the Appellant was conducted on July 19, 2019 in conjunction with her application for I/DD Waiver services (Exhibit D-5). The Appellant was diagnosed with Schizoaffective Disorder, Bipolar Type, Anxiety Disorder and Borderline Intellectual Functioning. The Weschler Adult Intelligence Scale (WAIS) administered to the Appellant yielded a full-scale Intelligence Quotient (IQ) score of 82, falling within the borderline range of intellectual functioning.

The second IPE conducted on October 2, 2019 resulted in the same diagnoses as the July 2019 IPE (Exhibit D-3). The evaluating psychologist did not administer another test to measure the Appellant's intellectual functioning due to the recent evaluation in previous months.

Kerri Linton, consulting psychologist for the Respondent, testified that based on the July 2019 IPE, the Appellant does not have an Intellectual Disability that is considered severe. With an IQ of 82, the Appellant is in the borderline range of intellectual functioning and individuals with a mild intellectual disability have IQ scores of 69 or below.

The Appellant is currently residing in an apartment with support from her case management agency, [REDACTED], while waiting for ICF/IID placement. Witnesses for the Appellant testified that based upon the Appellant's specific needs and her improvement in activities of daily living while receiving one-on-one support, the decision was made to reapply for I/DD Waiver. The Appellant's guardian and [REDACTED] team feel that the Appellant would benefit more from continued one-on-one support that could be provided through I/DD Waiver services rather than placement in a group ICF/IID home.

The Appellant has made multiple applications for I/DD Waiver services before and after attaining age 22, all of which were denied based upon failing to meet the diagnostic criteria of an eligible diagnosis of Intellectual Disability or related condition during the developmental period. However, in June 2019 the Appellant was approved for ICF/IID placement based upon documentation supporting the presence of an Intellectual Disability prior to age 22 (Exhibit D-11). Based upon the Respondent's own evidence, the Appellant meets the diagnostic criteria of a diagnosis of Intellectual Disability that developed during the developmental period to qualify for I/DD Waiver services.

The Appellant must also meet the functionality criteria found in policy of the presence of at least 3 substantial adaptive deficits of the 6 major life areas. 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. Standardized test scores must be supported by the narrative descriptions of an individual's abilities.

The Wide Range Achievement Test (WRAT) and the Adaptive Behavior Assessment System (ABAS) were administered to the Appellant in July 2019 in conjunction with her most recent application for I/DD Waiver services (Exhibit D-5). The WRAT measures an individual's abilities and achievement levels in reading, spelling and math. The Appellant received scores of 80 in reading, 84 in spelling and 74 in math. The WRAT has a mean of 100 and 3 standard deviations below the mean would be eligible scores of 55 and below to meet the definition of a substantial deficit. The Appellant did not have any eligible scores in the areas tested.

The ABAS measures an individual's adaptive behavior level of functioning. This test has a mean of 10, 3 standard deviations below the mean result in eligible scores of 1 or 2. The Appellant scores in relation to the major life areas as reported from the July 2019 ABAS are: communication (receptive/expressive language) 7, functional academics (learning) 4, self-care 4, self-direction 5 and the sub-domains that comprise capacity for independent living: community use 4, home living 6, health and safety 4, leisure 6 and social 5 (Exhibit D-5). The Appellant did not have eligible scores of a 1 or 2 to support substantial adaptive deficits in any of the major life areas.

The ABAS was administered to the Appellant during a second psychological evaluation conducted in October 2019 in conjunction with the Appellant's recent application (Exhibit D-3). The Appellant received scores of 1 in the areas of communication, community use, functional academics, home living, health and safety, self-care, self-direction, and social and received a 2 in the area of leisure. The administering psychologist noted in the evaluation that these scores were an underestimate of the Appellant's adaptive living skill development and were inconsistent previously obtained scores, intellectual functioning, academic achievement and history.

The narrative portion of the October 2019 psychological evaluation does not support the low scores the Appellant received on the ABAS. The narrative description the Appellant's abilities mirror the descriptions contained in the July 2019 psychological evaluation in which the Appellant did not receive any eligible scores from the ABAS.

The Appellant's representative contended that the Appellant may not have accurately reported her abilities during the evaluations and may have responded to the questions from the ABAS based upon the support she receives from the [REDACTED] staff and not her independent abilities. However, based on the narrative descriptions of the abilities from both the July 2019 and October 2019 evaluations, the scores derived from the October 2019 ABAS are not an accurate reflection of the Appellant's adaptive behavior functioning.

Whereas the Appellant failed to meet the functionality criteria of at least 3 substantial adaptive deficits of the 6 major life areas, eligibility for I/DD Waiver services cannot be established.

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 or related condition, which is severe and results in impairment of intellectual functioning or adaptive behavior similar to that of intellectually disabled individuals.
- 3) The diagnostic criteria of a diagnosis of Intellectual Disability prior to age 22 was established in June 2019 when the Appellant was approved for ICF/IID placement.
- 4) The testimony and evidence submitted failed to establish the presence of at least 3 substantial adaptive deficits out of the 6 major life areas.
- 5) The Appellant did not meet the functionality criteria, therefore eligibility for the I/DD Waiver Program cannot be established.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny medical eligibility for the Appellant for services under the I/DD Waiver Program.

ENTERED this 25th day of March 2020.

**Kristi Logan
State Hearing Officer**