



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
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**Jolynn Marra
Interim Inspector General**

August 12, 2020

[REDACTED]

RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.:20-BOR-1864

Dear Mrs. [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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Linda Workman, PC&A
Sarah Clendenin, PC&A
Nora Dillard, BMS

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

██████, A MINOR,

Appellant,

v.

Action Number: 20-BOR-1864

**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 minor. 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 August 6, 2020, on an appeal filed July 14, 2020.

The matter before the Hearing Officer arises from the May 19, 2020 determination by the Respondent to deny the Appellant medical eligibility for services under the Intellectual and Development Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services (BMS). The Appellant appeared by his mother, ██████. Appearing as a witness for the Appellant was ██████, the Appellant's father. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Intellectual and Development Disabilities Waiver (I/DD Waiver Program) Policy Manual §§ 513.6 through 513.6.4
- D-2 Notice of Denial, dated May 19, 2020
- D-3 Independent Psychological Evaluation (IPE), dated May 6, 2020
- D-4 West Virginia Birth to Three Evaluation/Assessment Summary Report by Danielle Hemmings, dated November 12, 2019
- D-5 West Virginia Birth to Three Evaluation/Assessment Summary by Mary Arbaugh, dated November 5, 2019
- D-6 Milestones Speech Plan of Care and Speech Evaluation by ██████, SLP, dated March 12, 2020

- D-7 West Virginia Birth to Three Evaluation/Assessment Summary Report by [REDACTED], M.A., CCC/SLP, dated October 21, 2019
- D-8 [REDACTED] County Schools Notice of Speech Education Team Meeting, dated December 2, 2019
- D-9 [REDACTED] County Schools Battelle Development Inventory, 2nd Edition, Screening Summary, dated December 2, 2019
- D-10 [REDACTED] County Schools Speech & Language Evaluation by [REDACTED], CCC/SLP PART 1, dated December 9, 2019
- D-11 [REDACTED] County Schools Speech & Language Evaluation by [REDACTED], PART 2, dated December 9, 2020
- D-12 [REDACTED] County Schools Evaluation by [REDACTED], dated December 9, 2019
- D-13 [REDACTED] County Schools Individualized Education Program (IEP) Meeting, PART 1, dated December 17, 2019
- D-14 [REDACTED] County Schools IEP, PART 2, dated December 17, 2019
- D-15 [REDACTED] County Schools Occupational Therapy (OT) Evaluation by [REDACTED], MOT, OTR/L, dated January 29, 2020
- D-16 Occupational Therapy (OT) Evaluation and Plan of Care by [REDACTED], OTH/L, dated March 18, 2020
- D-17 [REDACTED] County Schools IEP, dated February 21, 2020

Appellant's Exhibits:

- A-1 [REDACTED] (ST) Evaluation, dated March 12, 2020; [REDACTED] (OT) Evaluation, dated March 18, 2020; ; [REDACTED] (OT) Plan of Care, dated March 18, 2020; [REDACTED] (OT) Daily Notes, dated July 20, 2020; and [REDACTED] (ST) Daily Notes, dated July 20, 2020

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) An application was made on behalf of the Appellant for services under the I/DD Waiver Program.
- 2) The Respondent, Psychological Consultation & Assessment (PC&A), is contracted through the Bureau for Medical Services (BMS) to perform functions related to the I/DD Waiver Program, including eligibility determinations.
- 3) On May 6, 2020, [REDACTED] (Ms. [REDACTED]), a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-3)
- 4) The May 6, 2020 IPE lists a diagnosis of Autistic Disorder for the Appellant. (Exhibits D-3)

- 5) On May 19, 2020, the Respondent issued a notice denying the Appellant's application for the I/DD Waiver Program on the basis that documentation provided for review did not support an eligible diagnosis of either Intellectual Disability or a related condition which is severe. (Exhibit D-2)

APPLICABLE POLICY

I/DD Waiver Program Policy 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 Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) Level of Care.

I/DD Waiver Program Policy Manual § 513.6.2.1 Diagnosis provides in part:

The application 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 I/DD Waiver Program include, but 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 (3) substantial deficits out of the six (6) identified major life areas listed in § 513.6.2.2.

I/DD Waiver Program Policy Manual § 513.6.2.2 Functionality provides in part:

The applicant must have substantial deficits in at least three (3) of the six (6) 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 (6) sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three (3) 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 (3) 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 the 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 Individualized Education Program (IEP), Occupational Therapy evaluation, etc. if requested by the IP for review.

DISCUSSION

In order to be eligible to receive I/DD Waiver Program services, an applicant must be considered medically eligible in the following four categories: diagnosis, functionality, the need for active treatment, and the requirement of an ICF/IID Level of Care. Medical eligibility is considered by looking at each of these categories in order, beginning with diagnosis. If any of these eligibility categories are not met, medical eligibility for the I/DD Waiver program is denied. To meet the diagnostic criteria for I/DD Waiver eligibility, an applicant must have a diagnosis of Intellectual Disability or a related condition, which is severe and chronic, and which manifested prior to age 22.

On May 19, 2020, the Appellant's I/DD Waiver Program application was denied, as the Respondent found that documentation provided for review does not support an eligible diagnosis of either an Intellectual Disability or a related condition which is severe. The Respondent has to

demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis for I/DD Waiver Program eligibility purposes.

On May 6, 2020, an IPE was conducted for the Appellant by an independent psychologist, Ms. [REDACTED], to help determine I/DD Waiver Program eligibility. The Respondent testified the Appellant's IPE included a prior diagnoses of Autism Spectrum Disorder (Autism), with no treatment provided for Autism at the time of the IPE. Ms. [REDACTED] issued a current diagnosis of Autistic Disorder for the Appellant.

The Respondent stated there are three (3) different levels of Autism, ranging from Level 1 (mild) to Level 3 (severe). The Respondent testified that on May 6, 2020, the CARS2-ST was administered by Ms. [REDACTED] and the Appellant scored 31.0, which placed him in the mild to moderate range of symptoms of Autism. The Respondent indicated a score of 29.5 would place an individual in the minimal to no symptoms for Autism. The Respondent testified that a diagnosis of Autistic Disorder is a potentially eligible diagnosis, if severe and accompanied by impairment of general intellectual or cognitive functioning.

The Respondent testified that intellectual functioning was unable to be determined as Ms. [REDACTED] could not give the Appellant an Intelligence Quotient (IQ) test due to the Appellant being "untestable". Because the intellectual functioning could not be determined, the Respondent was only able to use the scores from the CARS2-ST to determine if the Appellant had a severe related condition. The CARS2-ST did not reveal a severe level of Autism.

The Appellant's father testified that the Appellant is unable to dress and feed himself, constantly needs assistance for redirection purposes, does not follow directions, does not use utensils correctly, is unable to hold a regular cup, and is not toilet trained. The Appellant's father further testified that the Appellant receives Speech Therapy and is around two years behind typically developing peers with his communication skills. The Appellant's father explained there has been no change in the Appellant's communication since March 2020. The Appellant's mother testified the Appellant is only independent in his play.

The Respondent conceded that the Appellant has substantial deficits, especially regarding *Receptive or Expressive Language (Communication)*, *Self-Direction*, and *Capacity for Independent Living*, however; without a qualifying diagnosis, the Appellant is not medically eligible for the I/DD Waiver Program.

Based on testimony and the documentation submitted, the Appellant does not meet the diagnostic criteria for eligibility for the I/DD Waiver Program. While policy lists Autism as a possible related condition, the documentation submitted does not support that the Appellant has an impairment that is severe.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires the applicant to have been diagnosed with an Intellectual Disability or related condition, which is severe and results in impairment of intellectual functioning to meet diagnostic eligibility criteria.
- 2) Evidence submitted did not establish that the Appellant's diagnosis of Autism is both severe and chronic.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of Appellant's application for services under the I/DD Waiver Program.

ENTERED this _____ day of August 2020.

Danielle C. Jarrett
State Hearing Officer