



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

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March 23, 2020

Delivered to all parties via email

██████████, DHHR Guardian for: ██████████, A PROTECTED INDIVIDUAL

RE: ██████████, A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 19-BOR-2820

Dear Ms. ██████████

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
PC&A
KEPRO

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

■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action No.: 19-BOR-2820

**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 29, 2020, on an appeal filed December 5, 2019.

The matter before the Hearing Officer arises from the Respondent's November 18, 2019 decision to deny the Appellant's application for participation in the I/DD Waiver Program due to unmet medical eligibility.

At the hearing, the Respondent appeared by Linda Workman. The Appellant was represented by his WV DHHR guardian, ■. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | Bureau for Medical Services Provider Manual (excerpt)
Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)
§§ 513.6 – 513.6.4 |
| D-2 | Notice of Decision, dated November 18, 2019 |
| D-3 | Notice of Decision, dated November 18, 2019 (duplicate) |

- D-4 Notice of Decision, dated November 20, 2013
- D-5 Psychological Evaluation of the Appellant
[REDACTED]
Evaluation dated: October 15, 2019
- D-6 Notice of Decision, dated January 3, 2017

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 was an applicant for the I/DD Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Linda Workman, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 4) The Appellant submitted an October 15, 2019 psychological evaluation in conjunction with this application. (Exhibit D-5)
- 5) By notice dated November 18, 2019, (Exhibit D-2) the Respondent notified the Appellant that his application for the I/DD Waiver Program was denied.
- 6) The denial notice (Exhibit D-2) additionally provided the reason for denial as "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility," and indicated the only major life area in which the Appellant was awarded a deficit was the area of *Self-Direction*.
- 7) The Appellant applied for the I/DD Waiver Program in 2013, and a denial notice from that application (Exhibit D-4), also based on unmet functionality, noted the Appellant was awarded one deficit in the major life area of *Self-Care*.

- 8) The Appellant applied for the I/DD Waiver Program in 2017, and denial notice from that application (Exhibit D-6), also based on unmet functionality, noted the Appellant was awarded two deficits: *Learning* and *Self-Direction*.
- 9) The functionality of the Appellant was assessed using the Adaptive Behavior Assessment System 3 (ABAS-3) results documented on the October 2019 psychological evaluation. (Exhibit D-5)
- 10) The ABAS-3 for the Appellant was completed by his residential staff. (Exhibit D-5)
- 11) The Appellant obtained test scores indicative of substantial deficits in three of the ABAS-3 domains or sub-domains: *Self-Direction* (also a major life area), *Health and Safety* (one sub-domain of the six comprising the major life area *Capacity for Independent Living*), and *Functional Academics* (corresponding to the major life area of *Learning*). (Exhibit D-5)
- 12) The Appellant was administered the Wide Range Achievement Test-4 (WRAT-4) during his October 2019 evaluation, which notes it is used to "...measure basic academic skills for individuals 5 through 94 years." (Exhibit D-5)
- 13) The Appellant's scores on the WRAT-4 subtests of *Word Reading* (81) and *Sentence Comprehension* (73) were not scores that demonstrate a substantial adaptive deficit in *Learning*.
- 14) The Appellant's score on the WRAT-4 subtest of *Math Computation* (58) was lower than the other WRAT-4 subtest results but was not three standard deviations below the mean for the test.

APPLICABLE POLICY

The policy regarding the I/DD Waiver Program is in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, "In order to be eligible to receive IDDW 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."

At §513.6.2.2, this policy addresses the functionality component and its required criteria. The policy requires an applicant to have substantial deficits in at least three of the six major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living is further divided into six sub-domains – home living, social skills, employment, health and safety, community and leisure. Policy requires a minimum of three of these sub-domains to be substantially limited for an applicant to meet the criteria for this major life area.

Functionality policy (§513.6.2.2) also defines substantial deficits 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 [intellectually disabled] normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior.”

DISCUSSION

The Appellant requested a fair hearing in response to the decision of the Respondent to deny his application for the I/DD Waiver Program based on its finding that he did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

The Respondent denied the Appellant’s application for I/DD Waiver Services based on unmet functionality. The ABAS-3 scores for the Appellant show an adaptive behavior deficit in the major life area of *Self-Direction*, which is insufficient to meet the policy requirement for substantial adaptive deficits in three major life areas. The Appellant obtained an eligible test score in *Health and Leisure*, but this was insufficient to establish the three sub-domains necessary to show a substantial deficit in the major life area of *Capacity for Independent Living*. The Appellant obtained an eligible test score on the ABAS-3 subtest for *Functional Academics* (corresponding to the major life area of *Learning*) but ineligible scores on the WRAT-4 used to measure his academic skills. This inconsistency (one eligible test score from the ABAS-3, but multiple ineligible test scores on the WRAT-4) does not support a deficit in the area of *Learning*.

The legal guardian for the Appellant offered testimony regarding his functionality. She explained that he needs reminders to perform the tasks related to *Self-Care*. Regarding *Receptive or Expressive Language*, she testified that you “can’t have a conversation” with the Appellant. She testified that the Appellant is socially inappropriate and that he wanders off more than noted in the evaluation (Exhibit D-5), creating a safety hazard. The testimony offered supports the presence of delays, but I/DD policy requires both narrative reports regarding functionality and test scores that quantify those delays as meeting the strict policy criteria for substantial adaptive deficits. Without eligible test scores, the testimony regarding the Appellant’s limitations is insufficient to establish medical eligibility for the I/DD Waiver Program.

The Appellant did not meet the functionality component of medical eligibility for the I/DD Waiver Program and the Respondent was correct to deny the Appellant’s application on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not establish substantial adaptive deficits in at least three of the six major life areas set by policy, the Appellant did not meet the required functionality component of medical eligibility for the I/DD Waiver Program.

- 2) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant's application for I/DD Waiver services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's application for the I/DD Waiver Program due to unmet medical eligibility.

ENTERED this ____ Day of March 2020.

**Todd Thornton
State Hearing Officer**