



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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August 2, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 22-BOR-1672

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, J.D.
Certified 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

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

■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 22-BOR-1672

**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 June 29, 2022, on an appeal filed May 24, 2022.

The matter before the Hearing Officer arises from the April 28, 2022, decision by the Respondent to deny prior approval for placement in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).

At the hearing, the Respondent appeared by Kristen Blank, PC&A. The Appellant was present but appeared by ■ ICS Program Manager. Appearing as witnesses for the Appellant were the Appellant's legal guardians, ■. Present but not participating were ■ and ■, PC&A. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §511.2.3
- D-2 Denial Notice, dated April 28, 2022
- D-3 Denial Notice, dated April 7, 2022
- D-4 West Virginia Department of Health and Human Resources ICF/IID Level of Care Evaluation (DD-2A), dated March 31, 2022
- D-5 Independent Psychological Evaluation (I/DD Waiver Program), dated March 17, 2022
- D-6 West Virginia Department of Health and Human Resources Social History (DD-4), dated March 22, 2022

- D-7 Independent Psychological Evaluation (IPE) West Virginia I/DD Waiver, dated June 25, 2021
- D-8 Independent Psychological Evaluation (IPE) West Virginia I/DD Waiver, dated November 16, 2020
- D-9 [REDACTED] Progress Notes, Admitting History & Physical Exam form, admission date November 24, 2021
- D-10 [REDACTED] Progress Notes, Psychological History and Assessment, dated November 29, 2021
- D-11 Letter signed by [REDACTED], LICSW, Behavioral Health Services, dated March 30, 2009
- D-12 Letter, unsigned, [REDACTED], dated March 25, 2009
- D-13 Occupational Therapy Evaluation [REDACTED] Schools, dated November 28, 2005
- D-14 Individualized Education Program [REDACTED] Schools, dated April 13, 2009
- D-15 Individualized Education Program [REDACTED] Schools, March 12, 2012
- D-16 Individualized Education Program [REDACTED] Schools, March 19, 2013
- D-17 Individualized Education Program [REDACTED] Schools, March 5, 2015
- D-18 Individualized Education Program [REDACTED] Schools, March 8, 2016
- D-19 Individualized Education Program [REDACTED] Schools, December 11, 2018

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) On October 16, 2021, the Appellant was admitted to the [REDACTED], West Virginia hospital for attempted suicide.
- 2) The Appellant was subsequently admitted to [REDACTED] on November 24, 2021 where he continues to reside.
- 3) A request for prior approval for placement in an ICF/IID facility was made on behalf of the Appellant.
- 4) The Respondent issued a Notice of Denial on April 7, 2022 and again on April 28, 2022, advising that prior approval had not been granted because the "documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Learning, Self-Direction, Receptive or Expressive Language, Mobility." (Exhibits D-2 and D-3)

- 5) The Appellant has been diagnosed with Autism Spectrum Disorder - Level 2, Mild Intellectual Disability, General Anxiety Disorder, and Major Depressive Disorder - recurrent, moderate. (Exhibits D-4, D-5, D-7, D-9, D-10)
- 6) The Appellant graduated from high school with a modified diploma, attended vocational school, and has worked for short periods at [REDACTED]
- 7) The Appellant is ambulatory, continent, speaks in full sentences, is able to perform activities and tasks, has participated in some sports, and enjoys watching sports (Exhibits D-4, D-5, D-6, D-7, D-8)
- 8) The Appellant is able to perform daily self-care skills with prompting and reminders, is able to perform household chores, and able to complete simple cooking tasks. (Exhibits D-4, D-5, D-6, D-7, D-8)
- 9) The Appellant's intelligence tests performed during his IPE on March 1, 2022 showed a Kaufman Brief Intelligence Test, Second Edition (KBIT-2) IQ Composite score of 56, a Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV) Full Scale IQ score of 59, and Wide Range Achievement Test Fourth Edition (WRAT-5) with a Word Reading score of 61, Spelling score of 81, and Math Computation score of 67, showing mild intellectual disability. (Exhibit D-5)
- 10) The Appellant's adaptive behavior test performed during his IPE on March 1, 2022 showed that Adaptive Behavior Assessment System, Third Edition-Adult Form (ABAS-3), scored by [REDACTED] staff and by the Appellant's mother was not supported by the narrative. (Exhibit D-5)
- 11) The Appellant did not meet the functionality criteria of at least three (3) substantial adaptive deficits in the six (6) major life areas that manifested prior to age 22.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §511.2.2 states individuals must meet both medical and financial eligibility to receive ICF/IID services. Individuals seeking ICF/IID services may have their eligibility determined prior to or after their admission to an ICF/IID facility.

To establish eligibility prior to admission, a complete packet of required information must be submitted no more than 30 days prior to placement in the ICF/IID facility and placement must occur within 90 days of the date of the DD-3. To establish initial eligibility post admission, a complete packet of required information must be submitted no more than thirty 30 days after placement in the ICF/IID facility. The DD-3 must be current (within 90 days of placement).

All submitted information must be current. The prior eligibility packet of information includes the DD-2A, DD-3, and DD-4 and must be submitted to the BMS or the ICF/IID contracted agent in

order to determine eligibility for each applicant for whom payment is requested. Current is defined as:

- DD-2A (Medical Evaluation) must have been completed within 180 days of the placement date. Additionally, any Medical Evaluation dated prior to 180 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.
- DD-3 (Psychological Report) must have been completed within 90 days of the placement date. Additionally, any psychological report dated prior to 90 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.
- DD-4 (Social History) must have been completed within 180 days of the placement date. Additionally, any social history dated prior to 180 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.

Upon receipt of a complete packet, an eligibility determination will be made within 30 days and the decision communicated to the applicant and/or the provider that submitted the packet. Post-admission eligibility determination requires the provider to submit a DD-1, and a complete DD-5 (IPP) within thirty 30 days after the intake to BMS or the ICF/IID contracted agent. Payment authorization for start and stop dates shall be delayed until the receipt of the DD-1, the DD- 5 (IPP) and the Inventory for Client and Agency Planning (ICAP).

BMS, through the ICF/IID contracted agent, determines the medical eligibility for an applicant in the ICF/IID Program. In order to be eligible for ICF/IID placement, the applicant must meet the following criteria:

1. 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.

a. Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for ICF/IID placement 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 persons with an intellectual disability, and requires services similar to those required for persons with an intellectual disability.

b. 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 below.

2. The applicant must have substantial adaptive deficits in three or more of the following six major life areas:

- self-care,
- receptive and/or expressive language, (communication)
- learning, (functional academics)
- mobility,
- self-direction,
- capacity for independent living which includes the following six subdomains,
 - home living,
 - social skills,
 - employment,
 - health and safety,
 - community use
 - leisure activities.

For the capacity for independent living major life area to be met, the applicant must be substantially delayed in at least three of the six sub-domains (home living, social skills, employment, health and safety, community use and leisure activities).

Substantial adaptive deficit is defined as scores on standardized measures of adaptive behavior that are three standard deviations below the mean or less than one percentile when derived from non-ID normative populations, or in the average range or below the 75th percentile when derived from ID normative populations.

The presence of substantial deficits must be supported by the additional documentation submitted for review (e.g. Individual Education Program (IEP), Occupational therapy (OT) evaluations, narrative descriptions, etc.). Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior.

3. The applicant must have a need for an ICF/IID level of care that:

- is certified by a physician (DD-2A) and,
- is documented as being required by the licensed psychologist (DD-3) and;
- is recommended by a licensed social worker (DD-4).

4. The applicant must require and would benefit from active treatment.

- Evaluations of the applicant must demonstrate a need for intensive instruction, services, assistance, and supervision in order to learn new skills and increase independence in activities of daily living.

DISCUSSION

To be considered medically eligible for the ICF/IID program, an 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. Autism if severe and chronic in nature may make an individual eligible for ICF/IID placement. The applicant must have substantial adaptive deficits in three or more in the six major life areas of: self-care, receptive and/or expressive language (communication),

learning (functional academics), mobility, self-direction, capacity for independent living (CIL). For the CIL major life area to be met, the applicant must be substantially delayed in at least three of the six sub-domains of home living, social skills, employment, health and safety, community use and leisure activities.

On April 7, 2022 and again on April 28, 2022, the Respondent notified the Appellant that prior approval for ICF/IID level of care services had been denied as the submitted documentation only demonstrated a substantial limitation in the area of CIL. Upon review of the submitted documentation, the Respondent found that the Appellant did not meet the functionality criteria of having at least three substantial adaptive deficits in the major life areas required for ICF/IID facility placement and therefore denied prior approval for facility admission.

A substantial adaptive deficit is defined by policy as standardized scores of at least three standard deviations below the mean, or less than one percentile, when compared to a normative population. Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior submitted for review.

Kristen Blanks, witness for the Respondent, testified that although the Appellant received eligible scores of less than one percentile (scaled scores of 1 or 2) on the Adaptive Behavior Assessment System, Third Edition – Adult Form (ABAS-3) administered during the March 2022 psychological evaluation in the areas of *self-care*, *communication*, *functional academics*, and *self-direction*, the narratives, in addition to the other submitted documentation for review, did not support deficits in these areas. It is noted that other eligible scores on the ABAS-3 in the areas of *community use*, *home living*, and *health and safety* were awarded under CIL.

Self-Care

The Appellant's ABAS testing on the March 2022 IPE completed by a staff member at [REDACTED] scored the Appellant with a 1 in Self-Care; whereas the Appellant's mother rated him a 5. The narrative showed that the Appellant was able to complete daily living skills with prompting, able to eat independently, assist in performing household chores, and could complete simple cooking tasks. The Appellant's March 2022 DD-2A also noted independent self-care with prompting. Ms. Blanks pointed out that verbal prompting does not equate to the need for active treatment offered in an ICF/IID facility level of care. The Appellant is not demonstrating a substantial deficit in the major life area of *self-care*.

Receptive/Expressive Language (Communication)

The Appellant's ABAS testing on the March 2022 IPE completed by a staff member at [REDACTED] and the Appellant's mother scored the Appellant with a 2 in Communication. However, the submitted documentation contradicted a substantial deficit in language. The March 2022 IPE noted that although the Appellant had articulation errors, he was able to complete sentences and able to ask and answer simple questions. The Appellant was noted to be able to initiate a conversation. Additionally, the March 2022 DD-2A indicated that the Appellant was able to communicate verbally. Based on this information, the Appellant is not demonstrating a substantial deficit in *receptive/expressive language*.

Learning (Functional Academics)

The Wide Range Achievement Test (WRAT) administered to the Appellant in March 2022 resulted in test scores of 67 in Math Computation, 81 in Spelling and 61 in Word Reading. The mean, or average of this test is a 100, and three standard deviations below the mean of this test would result in test scores of 55 or below. Ms. Blanks noted that the WRAT measures an individual's ability to learn and the scores from WRAT are inconsistent with a score of less than one percentile in functional academics. Results from the WRAT administered to the Appellant in November 2021 were 77 in Word Reading, 70 in Spelling and 70 in Reading. Ms. Blanks noted that the documentation submitted for review demonstrated that the Appellant had a mild intellectual disability. Additionally, the Autism Spectrum Disorder diagnosis that the Appellant received as a young child consistently showed a Level 2 functioning, which is not considered severe as required by policy. The Appellant was involved in special education classes throughout school and did receive a high school diploma and completed vocational learning classes in masonry. The documentation submitted did not show a substantial adaptive deficit in the area of *functional academics*.

Mobility

There is no dispute that the Appellant is ambulatory and has no issues with mobility. A substantial adaptive deficit cannot be found in the major life area of *mobility*.

Self-Direction

The Appellant's ABAS testing on the March 2022 IPE completed by a staff member at [REDACTED] rated the Appellant with a 4 in Self-Direction; whereas the Appellant's mother rated him a 2. The narrative showed that the Appellant was able to initiate preferred tasks and activities, able to follow one-two step directions, . A substantial adaptive deficit cannot be found in the major life area of *self-direction*.

The Appellant's representative, [REDACTED], testified because the Appellant answered the questions given on the March 2022 IPE, he believed those scores to be higher. [REDACTED] testified that the Appellant requires prompting and oversight. Ms. Blanks stated that the Appellant's need for 24/7 care is due to his mental illness and suicidal ideation, not due to the lack of functional ability from his mild intellectual disability or Level 2 Autism Spectrum Disorder. The Appellant clearly testified that he did not want to go home and that he wanted to be placed in a group home.

Although it is apparent that the Appellant would benefit from group home placement, he does not meet policy requirements for ICF/IID facility level of care placement. Policy requires that an individual demonstrate substantial adaptive deficits in at least three of the six major life areas to be eligible for placement in an ICF/IID facility. The documentation submitted failed to establish that the Appellant was substantially limited in at least two additional major life areas, therefore, Respondent's denial for prior approval for ICF/IID placement is affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that 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 ICF/IID level of care, and a determination that the individual would require and benefit from active treatment.

- 2) The Appellant demonstrated a substantial adaptive deficit in the major life area of *capacity for independent living*.
- 3) The documentation submitted failed to support that the Appellant was demonstrating additional substantial adaptive deficits in the major life areas.
- 4) The Appellant did not meet the functionality criteria for ICF/IID placement.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny prior approval for placement in an ICF/IID facility.

ENTERED this 2nd day of August 2022.

Lori Woodward, Certified State Hearing Officer