



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 352-0805 Fax: (304) 558-1992**

Jolynn Marra
Inspector General

July 20, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1714

Dear [REDACTED]:

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**

██████████,

Appellant,

v.

Action No.: 22-BOR-1714

**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 June 29, 2022, on an appeal filed June 2, 2022.

The matter before the Hearing Officer arises from the Respondent's May 23, 2022 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 was represented by Kerri Linton. The Appellant was represented by her mother, ██████████. 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 May 23, 2022 |
| D-3 | Independent Psychological Evaluation (IPE)
Evaluation date: May 2, 2022 |
| D-4 | ██████████ Board of Education
Confidential Psychological Evaluation Report
Report Date: November 10, 2006 |

- D-5 Board of Education of [REDACTED]
Educational Evaluation Report
Report Date: November 8, 2006
2016 Exit Document, [REDACTED] Department of Education
- D-6 Individualized Education Program (IEP)
IEP Team Meeting Date: February 9, 2015

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 Appellant is 25 years old. (Exhibit D-3)
- 3) 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.
- 4) Kerri Linton, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 5) The Respondent denied the Appellant's application for the I/DD Waiver Program in a notice dated May 23, 2022 (Exhibit D-2).
- 6) This notice (Exhibit D-2) provided the basis for denial as "Documentation submitted for review does not support the presence of an eligible diagnosis for the IDD Waiver Program of intellectual disability or a related condition which is severe with associated substantial adaptive deficits within the developmental period."
- 7) The notice to the Appellant (Exhibit D-2) indicated the Appellant did not have "substantial adaptive deficits" in any of the "six major life areas identified for Waiver eligibility."
- 8) The Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on May 2, 2022. (Exhibit D-3)
- 9) The Appellant was diagnosed with Autism during this evaluation, noted as "Level 2." (Exhibit D-3)

- 10) The Adaptive Behavior Assessment System – 3 (ABAS-3) was administered during the May 2022 evaluation of the Appellant. (Exhibit D-3)
- 11) The ABAS-3 results for the Appellant were based on the responses provided by her mother. (Exhibit D-3)
- 12) The remarks from the evaluating psychologist regarding the Appellant’s ABAS-3 results read, in pertinent part, “Based on observation, history, interview and testing, the above scores are believed to underrepresent her adaptive behavior functioning.” (Exhibit D-3)
- 13) The Gilliam Autism Rating Scale – Third Edition (GARS-3), was administered to the Appellant during the May 2022 evaluation to determine the probability of, and severity of autism. (Exhibit D-3)
- 14) The GARS-3 results for the Appellant were based on the responses provided by her mother. (Exhibit D-3)
- 15) The Appellant’s GARS-3 results included an Autism Index of 107 (based on 4 scores) or 109 (based on 6 scores), both of which corresponded to a “very likely” probability of Autism Spectrum Disorder, and a severity level of three (3). (Exhibit D-3)
- 16) The remarks from the evaluating psychologist regarding the Appellant’s GARS-3 results read, in pertinent part, “Based on interview, observation and other test results the above scores are believed by this psychologist to indicate a more severe level of Autism than is present.” (Exhibit D-3)
- 17) A psychological evaluation of the Appellant was completed at school, during November 2006, when the Appellant was in the developmental period. (Exhibit D-4)
- 18) This evaluation (Exhibit D-4) did not provide a diagnosis of the Appellant. (Exhibit D-4)
- 19) The November 2006 evaluation (Exhibit D-4) of the Appellant included the Appellant’s results from the Wechsler Intelligence Scale for Children – IV (WISC-IV) and noted a Full Scale IQ of 81.
- 20) The WISC-IV is an instrument producing results with a mean of 100 and a standard deviation of 15.

APPLICABLE POLICY

The policy regarding the I/DD Waiver Program is located 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 §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

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 (6) major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living domain is further divided into six (6) sub-domains – home living, social skills, employment, health and safety, community, and leisure. Policy requires a minimum of three (3) 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 to appeal the Respondent’s decision to deny her application for the I/DD Waiver Program based on its determination that she 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 Appellant is a 25-year-old female applicant for the I/DD Waiver Program. The Respondent’s denial of the Appellant’s application was based on unmet diagnostic and functionality requirements. For individuals outside the developmental period, such as the Appellant, the policy additionally requires these criteria to be “...manifested prior to age 22.”

There is no diagnosis offered of the Appellant prior to age 22. The Appellant obtained a Full Scale IQ result of 81 on the WISC-IV, administered when she was in the developmental period. This result does not indicate intellectual disability, based on testimony from the Respondent’s reviewing psychologist. The WISC-IV instrument is scaled to produce results with a mean of 100 and a standard deviation of 15. The Appellant’s WISC-IV results are not three standard deviations below the mean. The Appellant lacks a diagnosis or test results showing intellectual disability within the developmental period.

A psychological evaluation of the Appellant was conducted in May 2022. The ABAS-3 was administered to measure the Appellant’s functionality, and the GARS-3 was used to determine the severity and likelihood of Autism Spectrum Disorder. The evaluating psychologist found the

results of both instruments unreliable. The Respondent's reviewing psychologist found the results unreliable. These results are not given weight based on the testimony and evidence that they are not reliable. The Appellant's ABAS-3 scaled score in the area of Communication was a one (1), or the lowest score possible. The Appellant's narrative in the corresponding area of Receptive or Expressive Language reads, "[Appellant] speaks in sentences, and she can follow one-step instructions, and two-step instructions but the instructions may need repeated to her several times." (Exhibit D-3). Despite her ABAS-3 score of one (1) in the area of Self-Care, the narrative from the same evaluation described her functionality in the same area as, "[REDACTED] can bathe, dress and groom her [sic] but her [sic] but [sic] always chooses the same items of clothing to wear. She can microwave meals without assistance and can make a sandwich but sometimes she forgets to eat." (Exhibit D-3) These narratives describe the Appellant as having difficulties in these areas but contradict test scores which suggest almost no functional ability. Without an eligible diagnosis or reliable test scores, the Appellant has not established medical eligibility for the I/DD Waiver Program.

Based on the reliable information provided at the hearing, the Appellant did not meet the medical eligibility criteria for participation in the I/DD Waiver Program, and the Respondent was correct to deny the Appellant's application.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have an eligible diagnosis – presently, or prior to age 22 – she has not met the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant did not have reliable test scores, she did not establish substantial adaptive deficits or meet the functionality component of medical eligibility for the I/DD Waiver Program.
- 3) 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 decision of the Respondent to deny the Appellant's application for the I/DD Waiver Program due to unmet medical eligibility.

ENTERED this ____ Day of July 2022.

Todd Thornton
State Hearing Officer