



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801**

**Sheila Lee
Interim Inspector General**

December 6, 2022



RE: ██████████, A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 22-BOR-2357

Dear ██████████:

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
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-2357

**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 December 1, 2022, on an appeal filed October 25, 2022.

The matter before the Hearing Officer arises from the September 6, 2022, decision by the Respondent to deny medical eligibility for the Appellant's participation in the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, psychological consultant for the Bureau for Medical Services. The Appellant appeared by ■. The witnesses were sworn in, 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 September 6, 2022
- D-3 Independent Psychological Evaluation dated July 8, 2022
- D-4 Psychological Evaluation dated April 25, 2022
- D-5 Shelter Quarterly Plan of Care dated April 5, 2022

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 applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on July 8, 2022, in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant was diagnosed with mild Intellectual Disability, Bipolar 1 Disorder, Moderate Post-Traumatic Stress Disorder, Intermittent Explosive Disorder, and Attention Deficit Hyperactive Disorder (Exhibit D-3).
- 4) The Respondent issued a Notice of Denial on September 6, 2022, advising that the Appellant's application had been denied as the documentation provided did not consistently reflect the presence of an Intellectual Disability or related condition, which is severe. Additionally, the documentation did not support the presence of at least three (3) substantial adaptive deficits of the six (6) major life areas (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider 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 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 Respondent denied the Appellant's application as she did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Appellant was diagnosed with a mild Intellectual Disability, as documented in the July 2022 psychological evaluation. Kerri Linton, the Respondent's witness, testified that a mild Intellectual Disability does not meet the severity criteria to meet the diagnostic criteria for eligibility.

Ms. Linton reference a psychological evaluation conducted in April 2022 in which the Appellant received a provisional diagnosis of a borderline Intellectual Disability. The administering psychologist noted that although the Appellant received an IQ score of 58 on the Weschler Adult Intelligence Scale (WAIS), the Appellant was uncooperative during the test and the results could not be considered valid. Ms. Linton concurred that based upon the narrative portions of the April and July 2022 psychological evaluations, the Appellant's Intellectual Disability could not be considered severe.

Ms. Linton testified that policy specifically excludes mental illness as an eligible diagnosis for the I/DD Waiver Program. The Appellant has a history of mental illness and admissions to psychiatric facilities and Ms. Linton opined that the Appellant's limitations are attributed to mental illness, and not a severe Intellectual Disability. Furthermore, the Appellant is not exhibiting at least three (3) substantial adaptive deficits in the six (6) major life areas to meet the functionality criteria in policy.

The Appellant's representative expressed concern over the presence of an Intellectual Disability for the Appellant but did not offer additional testimony regarding her eligibility for the program.

Whereas the Appellant did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability that is severe, the Respondent's decision to deny the Appellant's application for services under the I/DD Waiver Program is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.

- 2) The Appellant was diagnosed with a mild Intellectual Disability, which does not meet the severity criteria in policy.
- 3) The Appellant was diagnosed with mental illness, which is specifically excluded by policy as an eligible diagnosis.
- 4) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

DECISION

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

ENTERED this 6th day of December 2022.

Kristi Logan
Certified State Hearing Officer