



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

**Bill J. Crouch  
Cabinet Secretary**

**BOARD OF REVIEW  
PO Box 1247  
433 MidAtlantic Parkway  
Martinsburg, WV 25402**

**Jolynn Marra  
Inspector General**

March 1, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.:22-BOR-1145

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-1145**

**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 February 23, 2022, on an appeal filed January 27, 2022.

The matter before the Hearing Officer arises from the January 11, 2022 decision by the Respondent to deny the Appellant's application for services under the Intellectual and Developmental Disabilities (IDD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by his mother, ■. The witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6 (excerpt)
- D-2 Notice of Denial, dated January 11, 2022
- D-3 Independent Psychological Evaluation (IPE), evaluation date January 6, 2022
- D-4 ■ Children's Hospital Progress Notes, August 27, 2021
- D-5 Developmental Evaluation, ■ Board of Education, October 21, 2021
- D-6 Birth to Three Assessment Summary Report, dated February 23, 2021 (missing page 1)

**Appellant's Exhibits:**

- A-1 WV Birth to Three Evaluation/Assessment Summary Report
- A-2 School Therapy Services, Occupational Therapy Evaluation, dated October 26, 2021
- A-3 ■ Schools Eligibility Committee Report, dated November 16, 2021

A-4 Individualized Education Program, [REDACTED] Schools, dated November 16, 2021  
A-5 Statement of Healthy, [REDACTED], dated June 14, 2019  
A-6 Progress Notes from [REDACTED] Center

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's mother applied for services for her 3-year-old child under the I/DD Waiver Program.
- 2) As part of the Appellant's I/DD Waiver application, he underwent an Independent Psychological Evaluation (IPE) on January 6, 2022. (Exhibit D-3)
- 3) The Appellant was diagnosed with Global Developmental Delay, R/O Moderate Intellectual Disability, Down's Syndrome, and Hirschsprung's Disease. (Exhibit D-3)
- 4) Kerri Linton, a licensed psychologist contracted by the Bureau for Medical Services, reviewed the Appellant's application and supporting documentation.
- 5) On January 11, 2022, the Respondent denied the Appellant's application for the I/DD Waiver Program due to the "documentation provided for review does not indicate an eligible diagnosis of Intellectual Disability. Global Developmental Delay is not equivalent to an Intellectual Disability nor considered a Related Condition." (Exhibit D-2)
- 6) The Appellant does not meet the diagnosis criteria for medical eligibility for the I/DD Waiver Program.

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, in part, states that to be medically eligible to receive I/DD Waiver Program Services, an applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. Additionally, 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.

Bureau for Medical Services Provider Manual §513.6.2.1, *Diagnosis*, explains that 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.

## **DISCUSSION**

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet all four criteria required by policy: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care.

The Appellant's I/DD Waiver application was denied as he did not meet the diagnosis criteria for program eligibility. Specifically, the Respondent found that the Appellant's diagnosis of Global Developmental Delay is not considered to be equivalent to an intellectual disability or considered a related condition.

Kerri Linton, consulting psychologist for the Respondent, testified that although it is not disputed that the submitted documentation showed that the Appellant exhibits developmental delay, it does not show he has a diagnosis of intellectual disability or a related condition at this time. Ms. Linton explained that the diagnosis of Global Developmental Delay is given to children under five years of age when there is a strong suspicion of Intellectual Disability. However, it does not equate to a diagnosis of Intellectual Disability and, therefore, is not a qualifying diagnosis to meet medical eligibility criteria. Additionally, Ms. Linton explained that although the Appellant has been diagnosed with Downs Syndrome, that diagnosis alone does not qualify as an eligible diagnosis.

Regarding the documentation submitted by the Appellant's mother, [REDACTED] Ms. Linton stated that the documentation did show that the Appellant has a developmental delay but did not indicate an intellectual disability that would qualify for I/DD Waiver Program eligibility. [REDACTED] did confirm that the psychologist related to her that he did not see any intellectual disability but that the Appellant does exhibit developmental delay.

The Appellant did not establish that he has an eligible diagnosis for program eligibility. Therefore, the Respondent's denial of the Appellant's I/DD Waiver application is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that each criteria of diagnosis, functionality, need for active treatment, and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) To meet the diagnosis criteria, an applicant must have been diagnosed with an 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.
- 3) The testimony and documentation submitted did not establish that the Appellant meets the diagnosis criteria for I/DD Waiver Program eligibility.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's denial for services under the I/DD Waiver program.

**ENTERED this 1<sup>st</sup> day of March 2022.**

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**Lori Woodward, Certified State Hearing Officer**