



**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 15, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:22-BOR-1150

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**

████████████████████,

Appellant,

v.

Action Number: 22-BOR-1150

**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 March 2, 2022, on an appeal filed January 28, 2022.

The matter before the Hearing Officer arises from the November 30, 2021 decision by the Respondent to deny the Appellant's application for services under the Intellectual and Developmental Disabilities (I/DD) 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, ██████████. Appearing as witnesses for the Appellant were ██████████, Director of Case Management, ██████████, and ██████████, Case Manager, ██████████. 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 November 30, 2021
- D-3 Second Independent Psychological Evaluation (IPE), evaluation dated October 28, 2021
- D-4 Initial IPE, evaluation dated September 16, 2021
- D-5 Notice of Denial, dated September 21, 2021
- D-6 ██████████ Schools Eligibility Committee Meeting, dated April 24, 1996
- D-7 ██████████ Schools Psychoeducational Report, dated April 18, 1996

Appellant's Exhibits:

- A-1 Letter from [REDACTED], dated January 21, 2022; West Virginia Department of Health and Human Resources Bureau for Medical Services (Medicaid) Request for Hearing, dated January 21, 2022
- A-2 [REDACTED] Authorization for Release of Information; [REDACTED] – Case Management Department, dated January 27, 2022
- A-3 2nd Medical Exam Due to Denial/Termination Independent Psychological Network (IPN) Response Form, dated October 21, 2021

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 41-year-old son 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 September 16, 2021, which established that the Appellant had Borderline Intellectual Functioning. (Exhibit D-4)
- 3) Kerri Linton, a licensed psychologist contracted by the Bureau for Medical Services, reviewed the Appellant's application and supporting documentation.
- 4) On September 21, 2021, the Respondent sent the Appellant notification of the denial of his application for the I/DD Waiver Program explaining that "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability to the severity typically seen for individuals who require an ICF level of care or a Related Condition which is severe either at present or during the developmental period (prior to the age of 22)." (Exhibit D-5)
- 5) On October 21, 2021, the Appellant requested a second IPE examination. (Exhibit A-3)
- 6) A second IPE was performed on October 28, 2021, by [REDACTED], who concluded that the Appellant's current cognitive testing indicated that the Appellant had mild intellectual disabilities. (Exhibit D-3)
- 7) On November 30, 2021, the Respondent sent the Appellant notification of the denial of his application for the I/DD Waiver Program explaining that "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability during the developmental period (prior to the age of 22). Policy stipulates that the eligible diagnosis must be present both during the developmental period with adaptive deficits due to the eligible diagnosis. Further, level of functioning found at present was inconsistent with the previous measures of intellect." (Exhibit D-2)

- 8) The Appellant sustained a traumatic brain injury secondary to meningitis in 1989. (Exhibit D-3)
- 9) The Appellant's Wechsler Intelligence Scale for Children-Third Edition (WISC-III) test completed in April 1996 during his developmental period showed results within the borderline range of ability or at the 2nd percentile. (Exhibit 7)
- 10) The Appellant's Woodcock Johnson Tests of Achievement completed in April 1996 during his developmental period showed scores over the 1st percentile. (Exhibit D-7)

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. Policy requires that the qualification for medical eligibility for the I/DD Waiver Program be based on the IPE that verifies 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 that require an ICF/IID Level of Care. For the I/DD Waiver Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation of functioning and reported history.

The Appellant is a 41-year-old male with a diagnosis of Traumatic Brain Injury (TBI) with borderline intellectual functioning. The Appellant's I/DD Waiver application was denied because the documentation provided for review did not indicate an eligible diagnosis of Intellectual Disability during the developmental period with adaptive deficits due to the eligible diagnosis.

Kerri Linton, consulting psychologist for the Respondent, reviewed the documentation submitted for the Appellant's application. Ms. Linton testified that although the Appellant's diagnosis of TBI is listed as a potential qualifying diagnosis, it must be considered severe and chronic in nature prior to the age of 22 to qualify. The submitted documentation did not establish that the Appellant's diagnosis of TBI had been considered severe and chronic in nature prior to the age of 22.

A [REDACTED] Eligibility Committee Meeting document dated April 24, 1996 and an April 18, 1996, [REDACTED] Psychoeducation Report evaluation were submitted for review, along with two Independent Psychological Evaluations conducted on September 16, 2021 and October 28, 2021. The [REDACTED] Eligibility Committee Meeting document noted the Appellant had adequate classroom performance and achievement with average reading and below average math. The [REDACTED] Psychoeducational Report included a data sheet showing the Appellant's performance on the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) and the Woodcock Johnson Tests of Achievement.

The WISC-III showed that the Appellant scored within the borderline range of ability or at the 2nd percentile. Ms. Linton noted that the Appellant's current Intellectual/Cognitive testing (Wechsler Adult Intelligence Scale 4th Edition) is consistent with the scores the Appellant received during the Appellant's developmental period. The results of these tests support the Appellant's diagnosis of borderline to mild intellectual disability. Ms. Linton also testified that in evaluating the Woodcock Johnson Test of Achievement, the mean, or average, is 100 with 3 standard deviations below the mean, or a score of 55 or below. None of the tested areas showed scores of 55 or below, or under the 1st percentile. Additionally, the [REDACTED] Psychoeducational Report stated that the

Appellant's IEP (Individualized Education Program) for the 1995-96 school year involved direct instruction in academics in the mildly impaired classroom and was noted by his teacher that the Appellant was very conscientious about accuracy and neatness of completed tasks and recommended that he be mainstreamed into LD and regular classes. Ms. Linton testified that the testing and narratives from the Appellant's developmental period did not support a finding of a severe disability as required by policy.

The Appellant's mother stated that she must do a lot of "stuff" for the Appellant. The Appellant's witness, [REDACTED] testified that the Appellant has poor hygiene and needs continued prompts to bathe and needs assistance with his activities of daily living (ADL's). The testimony presented showed that the Appellant currently requires prompting and supervision for self-care but did not establish that there was a severe disability during his developmental period due to his diagnosis of TBI.

While policy lists TBI as a related condition that could qualify an applicant for I/DD Waiver services, the documentation does not support that the Appellant had an impairment of functioning or adaptive behavior that manifested prior to the age of 22 that was similar to those individuals requiring ICF/IID Level of Care services. Thus, the Respondent's decision to deny the Appellant's I/DD Waiver application is affirmed.

CONCLUSIONS OF LAW

- 1) To establish medical eligibility for 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.
- 2) To meet the diagnosis criteria, an individual 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 met the medical 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 15th day of March 2022.

Lori Woodward, Certified State Hearing Officer