



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Inspector General**

March 30, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1256

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, BMS, WVDHHR
Kerri Linton, PC&A
Janice Brown, KEPRO

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1256

**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 23, 2022, on an appeal filed February 17, 2022.

The matter before the Hearing Officer arises from the December 27, 2021 decision by the Respondent to deny the Appellant's application for benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.

At the hearing, the Respondent appeared by Linda Workman, Licensed Psychologist/Long-Term Care Consultant, Psychological Consultation & Assessment (PC&A). The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ Appellant's sister; ██████████ Appellant's brother-in-law; and ██████████ Appellant's sister. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated December 27, 2021
- D-3 Independent Psychological Evaluation dated December 20, 2021
- D-4 Medical information from ██████████ Eye Institute Neurosurgery Clinic from 2016
- D-5 Letter from ██████████ M.D., dated January 15, 1985

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, currently age 64, applied for benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Program.
- 2) On December 27, 2021, the Appellant was notified that his I/DD Waiver Program application was denied because documentation submitted for review did not confirm the presence of an eligible diagnosis of severe Intellectual Disability or a related condition in the developmental period (prior to age 22) (Exhibit D-2).
- 3) The Appellant suffered a closed head injury as the result of a motor vehicle accident at age 20 in 1978 (Exhibits D-3 and D-5).
- 4) While the Appellant's injury occurred in the developmental period (prior to age 22), his present level of functioning does not indicate cognitive deficits or adaptive behavior consistent with the level of care provided in an Intermediate Care Facility (ICF) for Individuals with Intellectual Disabilities (Exhibit D-2).
- 5) The Appellant suffered several injuries as the result of his motor vehicle accident, including the closed head injury, fractures of both femurs, dislocation of his foot and radius, and a bronco plexus injury with palsy on the right side. He was unconscious for several weeks and was hospitalized for several months (Exhibit D-3).
- 6) Following the accident, the Appellant lived with his parents for 10 years, but later purchased land and a house (Exhibit D-3).
- 7) The Appellant was married for about two years, but had no children (Exhibit D-3).
- 8) The Appellant lived alone following his divorce and had the assistance of family members (Exhibit D-3).
- 9) The Appellant attends to most of his self-care needs independently or with limited assistance (Exhibit D-3).
- 10) The Appellant has difficulty standing for long periods due to pain and no longer cooks due to increasing medical problems (Exhibit D-3).
- 11) The Appellant communicates verbally without assistive devices (Exhibit D-3).
- 12) The Appellant denied a history of special education (Exhibit D-3).
- 13) Medical records from 2016 reveal a cerebral aneurysm and cerebellar atrophy (Exhibits D-3 and D-4).

- 14) The Appellant walks independently with the use of a cane, but has poor balance due to cerebellar atrophy (Exhibit D-3).
- 15) The Appellant can make simple choices between two items. He can transition well from one activity to the next, and previously enjoyed carpentry (Exhibit D-3).
- 16) The Appellant is unable to do household chores due to excessive pain and mobility issues (Exhibit D-3).
- 17) The Appellant receives in-home services four hours per day, five days per week, to assist him with activities of daily living (Exhibit D-3).
- 18) The Appellant achieved a full-scale IQ score of 74 on the Weschler Adult Intelligence Scale-Fourth Edition (WAIS-IV), which places him in the borderline to low average range of intellectual functioning (Exhibit D-3).
- 19) The Appellant's cognitive functioning was likely in the average range prior to his accident (Exhibit D-3).
- 20) The Appellant currently meets I/DD Waiver criteria in some scaled score areas on the Adaptive Behavior Assessment System-Third Edition (ABAS-3) (Exhibit D-3). However, there was no information concerning his functioning in these areas prior to age 22.
- 21) The Appellant's medical records indicate that his cognitive abilities likely decreased due to a cerebral aneurysm and cerebellar atrophy (Exhibit D-3).

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6.2.1 (Exhibit D-1) states:

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 may, if severe and chronic in nature, 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 disabilities 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 disabilities.

Additionally, the applicant who has the 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

To establish medical eligibility for participation in the I/DD Waiver Medicaid Program, an individual must meet the diagnostic, functionality and need for active treatment criteria.

Licensed Psychologist Linda Workman reviewed the Appellant's medical documentation and concluded that there are no records to demonstrate that the Appellant would have met diagnostic criteria for the I/DD Waiver Program prior to age 22. She pointed out that the Appellant bought a house and got married following a recovery period from his accident, which is not indicative of individuals who qualify for I/DD Waiver services. Ms. Workman explained that I/DD Waiver recipients require assistance in learning basic life skills. The Appellant does not require active treatment to learn things and functions with supervision, reminders, and family support.

The Appellant's witnesses testified that the Appellant's accident happened several decades ago, and, at that time, the Appellant was not evaluated by psychologists. The Appellant tries to push himself to do things and may overstate his abilities when asked. They indicated that the Appellant does not need placement in a nursing facility, but needs more in-home care. The Appellant spends his time watching television, becomes depressed, and is dependent on relatives for support. The Appellant's condition has deteriorated over the past few years.

While the Appellant suffered a head injury as the result of a motor vehicle accident in 1978, no documentation was provided to confirm a diagnosis of a severe Intellectual Disability that manifested prior to age 22. Therefore, medical eligibility for the I/DD Waiver Program cannot be established.

CONCLUSIONS OF LAW

- 1) To establish medical eligibility for the I/DD Waiver Medicaid Program, an applicant must meet the diagnostic, functionality and need for active treatment criteria.
- 2) No documentation was provided to confirm that the Appellant had a diagnosis of severe Intellectual Disability prior to age 22 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits that manifested prior to age 22.
- 3) As the Appellant does not meet diagnostic criteria, the Respondent acted correctly in denying his application for the I/DD Waiver Medicaid Program.

DECISION

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

ENTERED this 30th Day of March 2022.

Pamela L. Hinzman
State Hearing Officer