



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

July 20, 2023

[REDACTED]

RE: [REDACTED] . v. WVDHHR  
ACTION NO.: 23-BOR-1649

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,

**Tara B. Thompson, MLS**  
State Hearing Officer  
Member, State Board of Review

Encl: Decision Recourse  
Form IG-BR-29

CC: Janice Brown, KEPRO  
Stacy Broce, Bureau for Medical Services  
Kerri Linton, Psychological Consultation and Assessment (PC&A)

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

[REDACTED]

**Appellant,**

v.

**Action Number: 23-BOR-1649**

**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 Andrew Strauss Jr. 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 May 31, 2023.

The matter before the Hearing Officer arises from the Respondent's March 1, 2023 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities Waiver Program.

At the hearing, the Respondent was represented by Kerri Linton, Psychological Consultation and Assessment (PC&A). Observing and taking notes on behalf of PC&A was Jordan Mitchell. The Appellant appeared and was represented by his mother, [REDACTED]. Appearing as witnesses on behalf of the Appellant were [REDACTED] the Appellant's job coach, and [REDACTED] the Appellant's vocational counselor. All those providing testimony were sworn in and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Manual (BMS) Chapter 513 excerpts
- D-2 BMS Notice, dated March 1, 2023
- D-3 Behavioral Health Assessments, PLLC, Independent Psychological Evaluation (IPE), dated, January 31, 2023
- D-4 Behavioral Health Assessments, PLLC, Independent Psychological Evaluation Addendum, dated February 25, 2023
- D-5 BMS Notice, dated December 14, 2022
- D-6 IPE, dated December 7, 2022

- D-7 Neuropsychological Evaluation, dated April 12, 1988
- D-8 Notice of Appeals Council Decision, dated October 23, 2013
- D-9 Psychological and Vocational Evaluation, dated May 6, 1986
- D-10 Psychological Evaluation Report, dated October 26, 1982
- D-11 Psychiatric Intake Note, dated January 6, 1983
- D-12 Psychiatric Evaluation, dated February 22, 1988
- D-13 Work Activity Evaluation Report, dated January 13 through February 17, 1988
- D-14 Memorandum, dated February 25, 1988
- D-15 Work Evaluation Report, dated May 21, 22, 23, 29, 30, and 31, 1984
- D-16 Neurological Evaluation, dated January 27, 1983
- D-17 Division of Rehabilitation Services letter, dated June 5, 1992
- D-18 Individualized Education Program (IEP), signed November 15, 1984
- D-19 Case Development Log, dated May 18, 1984
- D-20 [REDACTED] staffing plan, signed February 24, 1988
- D-21 Hearing packet letter, checklist, and hearing request forms

**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 following Findings of Fact are set forth.

\* Irrelevant and untimely submitted evidence was not considered.

**FINDINGS OF FACT**

- 1) On March 1, 2023, the Respondent issued a notice advising the Appellant he was ineligible for the Medicaid I/DD Waiver because “documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver Program of intellectual disability or a related condition which is severe.”

Diagnosis

- 2) The Appellant was not diagnosed with an Intellectual Disability with concurrent substantial adaptive deficits manifested before age 22 (Exhibits D-3, D-6, D-7, and D-9 through D-10).
- 3) On May 6, 1986, [REDACTED] completed a Psychological and Vocational Evaluation with the Appellant (Exhibit D-9).
- 4) [REDACTED] diagnosed the Appellant with Schizotypal Personality Disorder, provisional (Exhibit D-9).
- 5) On April 12, 1988, [REDACTED] completed a neuropsychological evaluation with the Appellant (Exhibit D-7).

- 6) [REDACTED] diagnosed the Appellant with Organic Mental Disorder (Exhibit D-7).
- 7) On February 22, 1988, [REDACTED] completed a psychiatric evaluation with the Appellant (Exhibit D-12).
- 8) [REDACTED] psychiatric evaluation did not provide a diagnosis or testing results (Exhibit D-12).
- 9) On October 13, 2013, the Social Security Administration (SSA) issued a notice advising that the Appellant manifested “severe impairment: organic mental disorder” before age 22 (Exhibit D-8).
- 10) The SSA notice indicated, “mental impairment results in marked limitations in social functioning and concentration, persistence, or pace” (Exhibit D-8).
- 11) During the developmental period, the Appellant was diagnosed with mild cerebral palsy (Exhibit D-11).
- 12) On January 31, 2023, an IPE was conducted by [REDACTED] a Licensed Psychologist (Exhibit D-3).
- 13) The Appellant was 56 years old when he completed the IPE with [REDACTED] (Exhibit D-3).
- 14) [REDACTED] considered the results of previous psychological evaluations — conducted in December 2022, October 1982, May 1986, and April 1988 — and additional documentation including psychiatric assessments (Exhibit D-3).
- 15) [REDACTED] administered testing measures including an Adaptive Behavior Assessment System-Third Edition (ABAS-3), Wide Range Achievement Test-5 (WRAT-5), and Gilliam Autism Rating Scale-3 (GARS-3) (Exhibit D-3).
- 16) [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, Level 1 (Exhibit D-3).
- 17) [REDACTED] *Developmental Findings/ Conclusions* indicate she reviewed “records dating back to childhood that portrays [sic] criteria indicative of this diagnosis” (Exhibit D-3).
- 18) [REDACTED] *Developmental Findings/ Conclusions* reads, “In reviewing the documentation, it seems evident to this examiner that [REDACTED] possesses a higher functioning autism spectrum disorder that clinicians could or would not diagnose” (Exhibit D-3).
- 19) On December 7, 2022, an IPE was conducted by [REDACTED] [REDACTED] (Exhibit D-6).
- 20) [REDACTED] considered the SSA notice and a 1988 evaluation (Exhibit D-6).

- 21) [REDACTED] administered testing measures including a Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), ABAS-3, WRAT-5, and GARS-3 (Exhibit D-6).
- 22) [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, Level 1 (Exhibit D-6).

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.2 provide in relevant sections:**

Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of an Independent Psychologist Evaluation (IPE) which may include background information, mental status examination, a measure of intelligence, adaptive behavior achievement, and any other documentation deemed appropriate.

To be medically eligible, the applicant must require the level of care and services provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) as evidenced by the required evaluations and other information requested by the Independent Psychologist or the MECA and corroborated by the narrative descriptions of functioning and reported history.

The MECA determines the qualification for an ICF/IID level of care based on the IPE that verifies the presence of a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22. For the I/DD Waiver Program, individuals must meet the criteria for medical eligibility by the test scores and also by the narrative descriptions contained in the documentation.

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

**BMS Manual § 513.6.2.1 provides in relevant sections:**

If the applicant does not have a diagnosis of intellectual disability, the applicant must have a diagnosis of a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

If severe and chronic in nature, a diagnosis of Autism or Cerebral Palsy may make an individual eligible for the Medicaid I/DD Waiver program. Additionally, an applicant who has a diagnosis of 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 under *Section 513.6.2.2*

**Code of Federal Regulations 42 CFR § 435.1010(a)(2)-(6) provide in relevant sections:**

Persons with related conditions means individuals who have a severe, chronic disability that meets all the following conditions:

- Attributable to any other conditions, 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 like that of mentally retarded persons, and requires treatment or services like those required for these persons,
- Manifested before the person reaches age 22,
- Is likely to continue indefinitely,
- Results in substantial functional limitations in three or more of the following areas of major life activity:
  - Self-care
  - Understanding and use of language
  - Learning
  - Mobility
  - Self-direction
  - Capacity for independent living

**DISCUSSION**

The Respondent denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation did not establish the presence of an eligible diagnosis before age 22. The Appellant’s representative contended that the Appellant should be determined eligible because the documentation established the presence of a qualifying diagnosis and functioning deficits manifested before age 22.

The Bureau for Medical Services (BMS) contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine the Appellant’s eligibility for the Medicaid I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through a review of an Independent Psychological Evaluation (IPE) report — which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement, and any other documentation deemed appropriate. The MECA does not have the authority to change the information submitted for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's diagnosis and severity and can only decide if the Respondent correctly

determined the Appellant's eligibility based on the diagnosis and severity revealed in the submitted documentation.

While the evidence indicated the Appellant had been identified as disabled since age 18 due to an organic mental disorder, the criteria for establishing Medicaid I/DD Waiver Program eligibility is different than qualifying for SSA disability. To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have a severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of the Appellant's general intellectual functioning or adaptive behavior like those individuals with an Intellectual/Developmental Disability diagnosis. The related condition had to manifest before age 22, be likely to continue indefinitely and result in substantial functional limitations in three or more areas of major life activity. To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver Program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of a related condition which constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.

### **Eligible Diagnosis**

Based on the information provided, the Respondent must determine whether the documentation supports the presence of an eligible diagnosis with concurrent substantial deficits manifested during the Appellant's developmental period. The evidence revealed the Appellant had a history of mental health diagnosis and severe related deficits manifested before age 22. Pursuant to the policy, mental health diagnoses are ineligible for consideration as an eligible related condition.

The evidence revealed a mention of Cerebral Palsy, which may establish the presence of a potentially eligible diagnosis if severe. The preponderance of the evidence failed to establish the presence of a Cerebral Palsy diagnosis that constituted a severe and chronic disability with concurrent substantial deficits manifested during the Appellant's developmental period.

### **Autism Spectrum Disorder**

The policy requires the Respondent to rely on the information contained within the IPE and the submitted documentation. The IPE conducted by ██████████ reflected a thorough evaluation of the Appellant's historical records. Her conclusion narrative indicated that the historic records corroborated a diagnosis of Autism Spectrum Disorder, Level 1. Pursuant to her comments, she reviewed "records dating back to childhood that portrays [sic] criteria indicative of this diagnosis." She further stated, "In reviewing the documentation, it seems evident to this examiner that ██████████ possesses a higher functioning autism spectrum disorder that clinicians could or would not diagnose." ██████████ diagnosed the Appellant with Autism Spectrum Disorder, Level 1.

Although not diagnosed before age 22, the preponderance of evidence revealed the presence of Autism Spectrum Disorder, Level 1, during the Appellant's developmental period. While the evidence indicated that the Appellant had functioning deficits related to Autism Spectrum Disorder, Level 1, during the developmental period, the evidence revealed that the Appellant was diagnosed with the mildest form of autism spectrum disorder. The Respondent's representative

testified that to be a related condition that is severe, the documentation would need to establish the presence of Autism Spectrum Disorder, Level 3, during the Appellant's developmental period. The policy does not preclude the MECA from considering diagnostic severity level specifiers when considering whether the Appellant's diagnosis met the severity level required for Medicaid I/DD Waiver Program eligibility.

Because the presence of a severe related condition during the developmental period was not established by the evidence, severe functioning deficits related to an eligible diagnosis cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet medical eligibility criteria for diagnosis, functionality, need for active treatment, and require an ICF/IID Level of Care.
- 2) The preponderance of evidence revealed that the submitted documentation failed to support the presence of a related condition that constituted a severe and chronic disability with concurrent substantial deficits manifested before the Appellant was age 22.
- 3) The Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

Entered this 20<sup>th</sup> day of July 2023.

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**Tara B. Thompson, MLS**  
State Hearing Officer