



**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**

**Christopher G. Nelson  
Interim Inspector General**

August 10, 2023

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 23-BOR-2029

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Bureau for Medical Services  
KEPRO  
PC&A

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

**IN THE MATTER OF:**

**ACTION NO.: 23-BOR-2029**

██████████ **A PROTECTED INDIVIDUAL,**

**Appellant,**

**v.**

**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 July 27, 2023, on a timely appeal filed on June 23, 2023.

The matter before the Hearing Officer arises from the April 24, 2023 decision by the Respondent to deny medical eligibility for the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen. The Appellant was represented by her grandmother and guardian, ██████████. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- |     |  |
|-----|--|
| D-1 | Bureau for Medical Services policy excerpt |
| D-2 | Notice dated April 24, 2023                |

- D-3 Independent Psychological Evaluation, dated March 30, 2023
- D-4 Report dated July 10, 2010, and August 4, 2010
- D-5 [REDACTED] Schools Psychological Evaluation, dated November 8, 2011
- D-6 Psychological Evaluation, dated April 8, 2014
- D-7 Psychological Evaluation, dated February 15, 2019

**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 the Intellectual and Developmental Disabilities (I/DD) Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Charley Bowen, a licensed psychologist employed by PC&A, reviewed the eligibility determination regarding the Appellant.
- 4) The Respondent mailed the Appellant a letter dated April 24, 2023, denying the Appellant's application. (Exhibit D-2)
- 5) This notice (Exhibit D-2) provided the basis for the denial as "Documentation submitted for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe."
- 6) The Appellant was assessed in an evaluation (Exhibit D-3) conducted on March 30, 2023.
- 7) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, in this assessment (Exhibit D-3).
- 8) A psychological evaluation (Exhibit D-4) of the Appellant conducted in 2010 revealed no eligible diagnosis for the I/DD Waiver Program.

- 9) A psychological evaluation (Exhibit D-5) of the Appellant conducted by [REDACTED] in 2011 utilized the Autism Diagnostic Observation Schedule – Module 3 (ADOS – Module 3) to assess the Appellant, “...did not meet the criteria for autism in total.”
- 10) The Appellant was diagnosed with Autism Spectrum Disorder (primary), without a noted severity level, as a result of a psychological evaluation (Exhibit D-6) conducted in April 2014.
- 11) The Appellant was diagnosed with Autism Spectrum Disorder and Intellectual Disability (Intellectual Developmental Disorder) Mild, as a result of a psychological evaluation conducted on February 15, 2019. (Exhibit D-7)
- 12) Mr. Bowen testified that an individual’s intellect is ‘crystallized’ by age 7 or 8 and the Appellant’s low test scores resulting in the Intellectual Disability diagnosis (Exhibit D-7) are below her actual intellectual ability.

### **APPLICABLE POLICY**

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, “In order to be eligible to receive IDDW 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.”

At §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

### **DISCUSSION**

The Appellant requested a fair hearing to appeal the Respondent’s decision to deny the Appellant’s I/DD Waiver application based on an unfavorable medical eligibility finding. The Respondent must prove by a preponderance of the evidence that it acted correctly to deny the I/DD application on this basis.

I/DD medical eligibility is divided into four components, each required for overall eligibility. The basis for the Respondent’s denial of the Appellant’s application is diagnostic. The Appellant must have a diagnosis of Intellectual Disability or a related condition which is severe. The evidence and testimony does not support any such diagnosis. Autism Spectrum Disorder is a potentially eligible diagnosis, if at a ‘level 3’, or the most severe level. The Appellant was diagnosed with Autism Spectrum Disorder, but not at a level 3.

The Appellant was diagnosed with Intellectual Disability, Mild, but the expert witness for the Respondent offered convincing testimony as to why this diagnosis could not be supported. The Appellant was tested for intellectual disability on multiple assessments, with mixed results. The Appellant received a Full Scale IQ (FSIQ) of 65 on a test conducted in 2023 (Exhibit D-3), but the assessing psychologist noted that her results were "...significantly below those obtained previously, suggesting questions about validity." Two other assessments presented FSIQ results for the Appellant of 74 (Exhibit D-6) and 67 (Exhibit D-7), with the latter considered valid by the assessing psychologist. The testimony of the Respondent's expert witness is given considerable weight in this determination. Mr. Bowen testified that intellect is 'crystallized' for an individual at a young age, and lower than typical intelligence score results after that developmental milestone are more likely due to an individual testing below their ability rather than an accurate measure of intelligence. Because the sole potentially eligible diagnosis for the Appellant was supported by an aberrant score, the Respondent was correct in its determination that this diagnosis could not be substantiated.

The Appellant's grandmother and witness [REDACTED] offered narrative descriptions of the Appellant in their testimony. Their testimony was directed at the functionality component of medical eligibility. Although medical eligibility requires the functionality component as well, the Respondent's specific basis for denial was due to the lack of an eligible diagnosis.

Because the reliable testimony and evidence revealed no eligible diagnosis for the Appellant's participation in the I/DD Waiver Program, the Respondent correctly determined that the Appellant did not meet medical eligibility and denied the Appellant's application on that basis.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant does not have an eligible diagnosis for the I/DD Waiver Program, the Appellant did not meet medical eligibility for the program.
- 2) Because the Appellant did not meet medical eligibility for the I/DD Waiver Program, the Respondent must deny the Appellant's application for I/DD Waiver services.

### **DECISION**

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

**ENTERED this \_\_\_\_ day of August 2023.**

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**Todd Thornton**  
**State Hearing Officer**