



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

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

October 2, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-2273

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 ensure 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: Kerri Linton, Psychological Consultation and Assessment
Janice Brown, KEPRO
Stacy Broce, Bureau for Medical Services
Patricia Mapel, Appellant's Representative

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

██████████,

Appellant,

v.

Action Number: 23-BOR-2273

**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 August 9, 2023.

The matter before the Hearing Officer arises from the Respondent's June 15, 2023 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen, Psychological Consultation and Assessment. The Appellant was represented by his mother, ██████████. Appearing as a witness on behalf of the Appellant was ██████████. All witnesses were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Chapter 513
- D-2 BMS Notice, dated June 15, 2023
- D-3 Independent Psychological Evaluation (IPE), dated June 5, 2023
- D-4 IPE, dated May 4, 2023
Notice, dated May 18, 2023
██████████ Records

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.

FINDINGS OF FACT

- 1) On June 15, 2023, the Respondent issued a notice advising that the Appellant's application for Medicaid I/DD Waiver eligibility was denied because the documentation submitted failed to indicate the presence of an eligible diagnosis currently or before age 22 (Exhibit D-2).
- 2) The Respondent reviewed a June 5, 2023 second medical Independent Psychological Evaluation (IPE), 2011 and 2014 [REDACTED] Physician Services records; May 24, 2023 [REDACTED] Discharge Summary; and January 12, 2022 [REDACTED] Comprehensive (Exhibit D-2).
- 3) The Appellant was 48 years old at the time of the Respondent's decision (Exhibit D-3).
- 4) The Appellant has a history of mental illness diagnosis and treatment (Exhibits D-3 and D-4).
- 5) Records from the Appellant's developmental period were not submitted for review.
- 6) On March 31, 2011, the Appellant's diagnosis included Mood Disorder and Generalized Anxiety Disorder (Exhibit D-4).
- 7) On August 21, September 25, November 13, and December 18, 2014, the Appellant's diagnosis included Anxiety State, Unspecified Episodic Mood Disorder, Tobacco Use Disorder, Intermittent Explosive Disorder, and Borderline Intellectual Functioning (Exhibit D-4).
- 8) The Appellant's May 24, 2023 [REDACTED] discharge plan reflected a diagnosis of Bipolar I Disorder and Intellectual Disability (Exhibit D-4).
- 9) The [REDACTED] record was signed by [REDACTED], a licensed social worker (Exhibit D-4).
- 10) The June 5, 2023 IPE completed by Jennifer Robinson, a licensed psychologist, reflected diagnoses of Bipolar I Disorder, Generalized Anxiety Disorder, Alcohol Use Disorder in early remission by history, and Borderline Intellectual Functioning (Exhibit D-3).
- 11) The May 4, 2023 IPE completed by Andrea Pammer, a licensed psychologist, reflected diagnoses of Bipolar II Disorder, Alcohol Use Disorder in early remission, and Generalized Anxiety Disorder (Exhibit D-4).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.2.1 provide in relevant sections:

To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet eligibility. The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of an Independent Psychological 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 required evaluations and other information requested by the Independent Psychologist or the MECA and corroborated by 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 that the applicant has a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22. Mental illness is specifically precluded as an eligible related diagnosis.

For the I/DD Waiver Program, individuals must meet the criteria for medical eligibility not only by test scores but also by narrative descriptions contained in the documentation. To be eligible to receive I/DD Waive Program services, an applicant must meet the eligibility criteria in each [emphasis added] 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:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Examples of related conditions that may, if severe and chronic in nature, make an individual eligible for the IDWW 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.

DISCUSSION

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program because the documentation provided failed to verify the Appellant had an eligible diagnosis manifested before age 22. The submitted evidence indicated the Appellant was unable to obtain academic records from his developmental period because the records had been destroyed. The Appellant's representative argued that the Appellant has significant functioning deficits and requires substantial assistance. The Appellant's representative requested the Appellant's eligibility be approved.

The Respondent is required to determine the Appellant's eligibility for the Medicaid I/DD Waiver program through a review of an IPE and other documentation deemed appropriate. The Respondent 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 Respondent 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 can only decide if the Respondent correctly determined the Appellant's eligibility based on the diagnosis reflected in the submitted documentation.

To be eligible for the Medicaid I/DD Waiver Program, the preponderance of the evidence had to demonstrate the presence of an eligible diagnosis during the Appellant's developmental period. The submitted records revealed a history of mental illness diagnoses, which do not constitute an eligible diagnosis for Medicaid I/DD Waiver Program eligibility. The evidence revealed the presence of Borderline Intellectual Functioning. While the [REDACTED] records mentioned a discharge diagnosis of intellectual disability, the record was completed by a social worker, not a licensed diagnosing clinician. Further, corroborating testing and records were not submitted to indicate a diagnosis of severe intellectual disability was present during the Appellant's developmental period. Because the evidence failed to verify the presence of an eligible diagnosis during the Appellant's developmental period, the Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program. Because the Respondent correctly denied the Appellant's medical eligibility, the Appellant's request to reverse the Respondent's decision cannot be granted.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have an eligible diagnosis with concurrent substantial deficits manifested before age 22.
- 2) The preponderance of evidence failed to verify that the Appellant had an eligible diagnosis before 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 eligibility for the Medicaid I/DD Waiver Program.

Entered this 2nd day of October 2023.

Tara B. Thompson, MLS
State Hearing Officer