



**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**

October 3, 2023

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-2380

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-2380

██████████ **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 September 6, 2023, on a timely appeal filed on August 1, 2023.

The matter before the Hearing Officer arises from the June 30, 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 mother and guardian, ██████████ 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 June 30, 2023 |

- D-3 Independent Psychological Evaluation, dated June 7, 2023
- D-4 Amendment to the IEP, dated February 24, 2020; Individualized Education Program (IEP), [REDACTED] Schools, dated October 28, 2019
- D-5 IEP, [REDACTED] Schools, dated October 28, 2019 (duplicate)
- D-6 IEP Consideration for students who are deaf or hard of hearing, dated October 28, 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 June 30, 2023, denying the Appellant's application. (Exhibit D-2)
- 5) This notice (Exhibit D-2) provided the basis for the denial as "Documentation provided for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 6) The notice (Exhibit D-2) further noted that "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility," and that the Appellant was awarded a deficit in only one such area: *self-care*.
- 7) The Appellant was assessed in an evaluation (Exhibit D-3) conducted on June 7, 2023.

- 8) The Appellant was diagnosed with Borderline Intellectual Functioning in this assessment, which is not an eligible diagnosis for the I/DD Waiver Program. (Exhibit D-3)
- 9) During the June 2023 evaluation, the Appellant was tested using the WISC-V, to measure intellectual and cognitive ability; the ABAS-3, to measure adaptive functioning; and the WRAT-5, to measure functional academics. (Exhibit D-3)
- 10) The Appellant's WISC-V results included a Full Scale IQ of 60, and a note from the administering psychologist that, "...her intellectual abilities appear to be more commensurate with those of her verbal comprehension skills, with a composite score of 70..." (Exhibit D-3)
- 11) The Appellant's ABAS-3 scores were outside the range indicative of substantial adaptive deficits, except for the Appellant's score in *self-care*.
- 12) The Appellant's WRAT-5 results included the following subtests and standard scores: Word Reading, 80; Spelling, 76; Math Computation, 67; Sentence Comprehension, 73; and Reading Composite, 75.

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."

At §513.6.2.2, this policy addresses functionality, and reads, "The applicant must have substantial deficits in at least three of the six identified major life areas...Self-care; Receptive or expressive language (communication); Learning (functional academics); Mobility; Self-direction; and, Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area. Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75th percentile when derived from ID normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must

be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, occupational therapy evaluation, etc. if requested by the IP for review.”

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 Respondent’s denial of the Appellant’s application is based on unmet diagnostic and functionality components. The Appellant must have a diagnosis of Intellectual Disability or a related condition which is severe. The evidence and testimony do not support any such diagnosis. The Appellant was diagnosed with Borderline Intellectual Functioning, and the Appellant’s assessing psychologist noted, regarding the Appellant’s Full Scale IQ score of 60 on the WISC-V, “...her intellectual abilities appear to be more commensurate with those of her verbal comprehension skills, with a composite score of 70.” (Exhibit D-3) The Appellant only had one subtest (Math Computation) with results two standard deviations below the mean on the WRAT-5, administered to assess her functional academics. (Exhibit D-3) The reliable evidence presented at the hearing did not show the Appellant met the policy requirement for an Intellectual Disability diagnosis, or a diagnosis of a related condition that is severe.

Evidence and testimony also failed to show the Appellant had the required deficits to establish the functionality component of I/DD Waiver Program medical eligibility. The ABAS-3 test is administered for this purpose, and the Appellant obtained an eligible score in only one area: *self-care*. The Respondent awarded this deficit in its denial notice but noted that it is only one major life area of the three required, at minimum, to meet policy criteria.

The Appellant’s mother testified that her daughter could function but is slow at some tasks. She testified that she wanted to get her daughter into a program that can help her. She did not believe that test results could fully demonstrate her daughter's limitations.

With unmet diagnostic and functionality components of medical eligibility, the Appellant failed to establish I/DD Waiver Program eligibility. The Respondent’s decision to deny the Appellant’s application for the I/DD Waiver Program on these bases is affirmed.

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 criteria for the program.

- 2) Because the Appellant does not have substantial adaptive deficits in at least three (3) major life areas, as defined by I/DD Waiver Program policy, the Appellant did not meet medical eligibility criteria for the program.
- 3) Because the Appellant did not meet medical eligibility criteria 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 October 2023.

**Todd Thornton
State Hearing Officer**