



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Jeffrey H. Coben, M.D.  
Interim Cabinet Secretary

BOARD OF REVIEW  
Raleigh County DHHR  
407 Neville Street  
Beckley, WV 25801

Sheila Lee  
Interim Inspector General

January 13, 2023

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 22-BOR-2542

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
PC&A

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-2542**

**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 January 12, 2023, on an appeal filed November 28, 2022.

The matter before the Hearing Officer arises from the October 31, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau of Medical Services. The Appellant appeared by his stepmother, ■. The witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated October 31, 2022
- D-3 Independent Psychological Evaluation dated October 5, 2022
- D-4 Medical History
- D-5 Psychoeducational Evaluation dated April 25, 2022

**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 services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on October 5, 2022, in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant has eligible diagnoses of a mild Intellectual Disability and Cerebral Palsy (Exhibits D-3 and D-4).
- 4) The Respondent found the Appellant was demonstrating substantial deficits in the major life areas of self-care and learning (Exhibits D-2, D-3, and D-5).
- 5) The Respondent issued a Notice of Denial on October 31, 2022, advising that the Appellant's application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in three or more of the major six life areas (Exhibit D-2).

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that 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.

#### **Diagnosis**

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, if severe and chronic in nature, may 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 Disability 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 disability.

Additionally, the applicant who has a 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**

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- 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 75<sup>th</sup> percentile when derived from Intellectual Disability (ID) normative populations when ID 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.

### **Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include

services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## DISCUSSION

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Appellant met the diagnostic criteria for eligibility for the I/DD Waiver Program with diagnoses of mild Intellectual Disability and Cerebral Palsy. The Respondent denied the Appellant's application for services as the functionality criteria had not been met.

Kerri Linton, witness for the Respondent, testified that based upon the Adaptive Behavior Assessment Scale (ABAS) that was administered to the Appellant during the October 5, 2022, psychological evaluation, the Appellant was found to be demonstrating substantial deficits in only two of the major life areas: self-care and learning.

Substantial deficits are determined by standardized test scores of three standard deviations below the mean, or less than one percentile when compared to a normative population. The mean, or average score, for the ABAS is a ten and eligible scores of three standard deviations below the mean are a 1 or 2.

Ms. Linton referred to the scores the Appellant received on the ABAS regarding the major life areas. The Appellant received eligible scores in self-care, learning, health and safety and home living. Health and safety and home living are subcomponents of the major life area of capacity for independent living. To receive a deficit in capacity for independent living, an individual must have eligible scores in at least three of the subcomponents.

██████████ testified that the Appellant uses a walker to ambulate and cannot climb stairs. ██████████ questioned the Appellant not receiving a deficit in the area of mobility based on upon is inability to ambulate independently.

Ms. Linton testified that while the Appellant requires assistance with ambulation, the use of assistive devices does not constitute a substantial deficit in the area of mobility, therefore, a deficit was not awarded in that major life area.

Based upon the documentation and testimony presented, substantial deficits in the life areas of mobility, capacity for independent living, self-direction and receptive or expressive language were not established. Whereas the Appellant does not meet the functionality criteria as set forth in policy, the Respondent's decision to deny the Appellant's application for I/DD Waiver services is affirmed.

## CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria with eligible diagnoses of mild Intellectual Disability and Cerebral Palsy.
- 3) The Appellant did not meet the functionality criteria of demonstrating at least three substantial deficits in the six major life areas.
- 4) The Appellant does not meet medical eligibility criteria for services under the I/DD Waiver Program.

## DECISION

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

**ENTERED this 13<sup>th</sup> day of January 2023.**

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**Kristi Logan**  
**Certified State Hearing Officer**