



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 11, 2023



RE: [REDACTED] A PROTECTED INDIVIDUAL, v. WVDHHR  
ACTION NO.: 23-BOR-2593

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Stacy Broce, WVDHHR  
Kerri Linton, PC&A  
Janice Brown, KEPRO

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 23-BOR-2593**

**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 October 4, 2023.

The matter before the Hearing Officer arises from the August 7, 2023, decision by the Respondent to deny I/DD Waiver Medicaid benefits.

At the hearing, the Respondent appeared by Kerri Linton, Long-Term Care Clinical Consultant, Bureau for Medical Services. The Appellant was present for the hearing and was represented by her biological mother, ■ All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Chapter 513.6
- D-2 Notice of Decision dated August 7, 2023
- D-3 Independent Psychological Evaluation dated July 24, 2023
- D-4 Individualized Education Program (IEP) from ■ Schools (meeting date - October 10, 2022)
- D-5 IEP Progress Report
- D-6 Medical records from ■ Hospital
- D-7 Medical records from ■

**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, who is currently 18 years old, applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.
- 2) The Respondent sent the Appellant a Notice of Decision on August 7, 2023, indicating that her I/DD Waiver Program application was denied (Exhibit D-2).
- 3) The August 7, 2023, Notice states that the Appellant's I/DD Waiver application was denied because documentation submitted for review "does not substantiate the presence of Intellectual Disability prior to the onset of a Major Mental Illness. Per policy, Mental Illness is specifically excluded as a potential eligible diagnosis." In addition, the Notice states 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" (Exhibit D-2).
- 4) The Notice indicated that the Appellant was determined to be substantially deficient in the major life areas of *Learning* and *Self-Direction* (Exhibit D-2).
- 5) An Independent Psychological Evaluation (IPE) was completed for the Appellant on July 24, 2023 (Exhibit D-3).
- 6) The IPE lists diagnoses for the Appellant of Mild Intellectual Disability, Schizoaffective Disorder (depressive type by history), and Attention Deficit/Hyperactivity Disorder (AD/HD) (combined presentation) (Exhibit D-3).
- 7) The Appellant performs self-care tasks independently and/or with supervision (functional area of *Self-Care*).
- 8) The Respondent considers scaled scores of 1 and 2 as I/DD Waiver Program-eligible scores on the Adaptive Behavior Assessment System- Third Edition (ABAS-3) testing instrument. The Appellant received a program-ineligible scaled score of 5 in self-care on the July 2023 IPE (Exhibit D-3).
- 9) The Appellant can communicate her wants and needs without the use of assistive devices (functional area of *Receptive or Expressive Language*) (Exhibit D-3).

- 10) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).
- 11) The functional area of *Capacity for Independent Living* encompasses the subcomponents of home living, socialization, leisure skills, community use, health and safety, and employment. The Appellant received program-ineligible ABAS-3 scores of 3 in community use, 3 in home living, and 3 in leisure. She received eligible ABAS-3 scores of 2 in health and safety, and 1 in social (Exhibit D-3).
- 12) The Appellant has difficulty comprehending potential dangers and identifying boundaries with other people (Exhibit D-3).
- 13) The Appellant was placed into foster care at age five and was subsequently adopted. She resided with her adoptive parents until she was 18 years old, at which time she was forced to leave the home due to behavioral issues (Exhibit D-3).
- 14) The Appellant physically attacked her adoptive mother and has had physical altercations with her autistic brother. She slapped a two-year-old child, causing the child to fall and sustain injuries (Exhibit D-3).
- 15) The Appellant currently resides with her biological mother (Exhibit D-3).
- 16) The Appellant has temper outbursts and must be physically restrained at times (Exhibit D-3).
- 17) The Appellant was admitted to [REDACTED] in June 2023 after she physically assaulted her mother's boyfriend (Exhibit D-3).
- 18) The Appellant's discharge diagnoses from [REDACTED] include intellectual functioning disorder (Intellectual Developmental Disability) and mood disorder (Exhibit D-6).
- 19) Records from [REDACTED] include diagnoses of schizoaffective disorder (unspecified) and AD/HD (predominantly hyperactive impulsive type) (Exhibit D-7).
- 20) An Individualized Education Program (IEP) from [REDACTED] from October 2022 indicates that the Appellant falls within the extremely low range of intellectual functioning; however, the document includes no test scores to verify specific functioning levels (Exhibit D-4).

## **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6 (Exhibit D-1) state:

### **513.6.2.1 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 may, if severe and chronic in nature, 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 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.

Additionally, the applicant who has the 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*.

### **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 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.

#### **513.6.2.3 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**

To qualify for the I/DD Waiver Medicaid Program, policy dictates that an 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. Mental illness is specifically excluded as an eligible program diagnosis.

The Respondent's representative, Kerri Linton, Long-Term Care Clinical Consultant for the Bureau for Medical Services, testified that documentation provided for review did not support the presence of an Intellectual Disability prior to the onset of the Appellant's mental illness. Ms.

Linton reviewed medical records, as well as 2022 IEP documentation, indicating that no test scores are included in the IEP to assess the Appellant's specific level of intellectual functioning.

The Appellant's biological mother, [REDACTED], testified that she has been attempting to obtain historical medical documentation from [REDACTED] for the Appellant. [REDACTED] stated that the Appellant requires assistance with several activities of daily living, including medication administration, handling money, and self-care. [REDACTED] recalled an incident at [REDACTED] in which the Appellant had a bowel accident and did not comprehend the need to change her soiled clothing. She testified that the Appellant must be supervised, stating that the Appellant once left her residence, walked a long distance, and was picked up by police. [REDACTED] contended that the Appellant only experienced combative behavior because she had not been properly medicated. [REDACTED] stated that she has been taking care of the Appellant and that the Appellant does well under her supervision; however, [REDACTED] cannot provide continuous care to the Appellant without compensation due to financial limitations.

While the Appellant clearly faces many challenges, the documentation submitted for review does not confirm the presence of an Intellectual Disability that occurred prior to the onset of major mental illness. Therefore, the Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic criteria is affirmed.

### **CONCLUSIONS OF LAW**

- 1) To qualify for I/DD Waiver Medicaid benefits, an individual must have a diagnosis of intellectual disability or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.
- 2) Documentation submitted for review does not substantiate the presence of an Intellectual Disability prior to the onset of the Appellant's mental illness, or the presence of substantial limitations in three of the six major life areas considered for I/DD Waiver Program eligibility.
- 3) As mental illness is specifically excluded as a program-eligible diagnosis under I/DD Waiver Program policy, the Appellant has not met diagnostic criteria for the program.
- 4) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on medical ineligibility is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny I/DD Waiver Medicaid benefits.

**ENTERED this 11<sup>th</sup> day of October 2023.**

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**Pamela L. Hinzman  
State Hearing Officer**