



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 31, 2023

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR
ACTION NO.: 22-BOR-2652

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 of Medical Services
PC&A

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

█, A JUVENILE,

Appellant,

v.

Action Number: 22-BOR-2652

**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 Juvenile. 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 25, 2023, on an appeal filed December 21, 2022.

The matter before the Hearing Officer arises from the December 6, 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 mother, █. Appearing as a witness for the Appellant was █, his grandmother. All witnesses were sworn in, 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 December 6, 2022
- D-3 Independent Psychological Evaluation dated November 16, 2022
- D-4 Diagnostic Impressions Report dated July 29, 2022
- D-5 Assessment Report dated July 29, 2022
- D-6 Individualized Education Plan dated August 15, 2022
- D-7 Educational Evaluation Report dated May 25, 2022
- D-8 Psychoeducational Evaluation Report dated May 27, 2022
- D-9 Individualized Education Plan dated September 6, 2022
- D-10 Speech and Language Evaluation Report dated May 24, 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) The Appellant has been diagnosed with Autism Disorder, Level 1, and mild Intellectual Disability (Exhibits D-3, D-4 and D-5).
- 3) The Respondent issued a notice of denial on December 6, 2022, advising that the Appellant's application had been denied as the documentation did not support the presence of substantial adaptive deficits in three or more of the six major 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 75th 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 Respondent conceded that the Appellant met the diagnostic criteria with a diagnosis of mild Intellectual Disability. However, Kerri Linton, witness for the Respondent, contended that the Appellant was not found to have substantial deficits in any of the six major life areas.

A substantial adaptive deficit is determined by standardized test scores of three standard deviations below the mean, or less than one percentile, when derived from a normative sample that represents the general population.

The Adaptive Behavior Assessment Scale (ABAS) measures an individual's adaptive behaviors in the six major life areas. The Appellant was administered the ABAS on November 16, 2022, during the independent psychological evaluation in conjunction with the I/DD Waiver application (Exhibit D-3). The mean, or average score, of the ABAS is 10, with three standard deviations below the mean as scaled scores of 1 or 2. The Appellant received the following scores from the November 2022 ABAS: Communication – 4, Community Use – 7, Functional Pre-Academics – 7, Home Living – 6, Health and Safety – 4, Leisure – 6, Self-Care – 3, Self-Direction – 4, Social – 4, Motor – 8. The Appellant did not have eligible scores of three standard deviations below the mean in any of the six major life areas.

The ABAS that was administered to the Appellant on May 24, 2022, during a psychoeducational evaluation resulted in similar scores to the November 2022 for the Appellant. There were no substantial deficits identified from this evaluation (Exhibit D-8).

The Appellant's mother and grandmother contended that the Appellant met eligibility criteria based upon the reports provided for review. The Appellant's mother testified that she thinks highly of her son which may have caused his scores to be higher than is accurate to his abilities. The Appellant's mother stated that the Appellant is completely dependent on her and has deficits in all of the major life areas except for mobility.

Standardized test scores of three deviations below the mean are required to support the presence of a substantial deficit in the major life areas. Based upon the evaluations submitted, the Appellant did not have eligible test scores in any of the six major life areas as derived from the May and November 2022 ABAS evaluations. Eligible test scores must be present in at least three of the six major life areas to meet the functionality criteria in policy.

Whereas the documentation submitted did not support the presence of at least three adaptive deficits in the six major life areas, the Appellant did not meet the functionality criteria to receive services under the I/DD Waiver Program.

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 an eligible diagnosis of mild Intellectual Disability.
- 3) The Appellant did not meet the functionality criteria of demonstrating at least three substantial deficits in the six major life areas as derived from standardized test scores.
- 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 31st day of January 2023.

Kristi Logan
Certified State Hearing Officer