



**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**

December 6, 2023

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-3275

[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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: BMS/PC&A/KEPRO

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

██████████ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 23-BOR-3275

**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 November 30, 2023, on an appeal filed October 18, 2023.

The matter before the Hearing Officer arises from the August 7, 2023 decision by the Respondent to deny the Appellant's application for services under the Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her mother, ██████████. Appearing as a witness for the Appellant was ██████████ Case Manager, Integrity Case Management. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.4
- D-2 Notice of Decision dated August 7, 2023
- D-3 Independent Psychological Evaluation dated June 27, 2023
- D-4 ██████████ Schools Speech and Language Assessment dated March 28, 2023
- D-5 West Virginia Birth to Three Assessment dated October 25, 2019
- D-5a Duplicate information from West Virginia Birth to Three
- D-6 Information from ██████████ dated May 9, 2023
- D-7 Occupational Therapy Pediatric Progress Note dated August 31, 2022
- D-8 Occupational Therapy Evaluation dated April 26, 2023

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 is a five-year old whose parents applied for services under the Intellectual/Developmental Disabilities Waiver (I/DD) program.
- 2) On June 27, 2023, an Independent Psychological Evaluation (IPE), a requirement of the application process was completed with the Appellant and her parents.
- 3) The Appellant was diagnosed in the IPE with Autism Spectrum Disorder (Level 2), requiring substantial supports with accompanying Intellectual Impairment with Language Impairment and Global Developmental Delay.
- 4) On August 7, 2023, the Respondent issued a Notice of Decision advising the Appellant and her parents, that the application for I/DD Waiver services had been denied citing that "documentation submitted for review does not substantiate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."

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

To be determined eligible for the I/DD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and the requirement of ICF/IID level of care. Based on the information and evaluations submitted for review, the Appellant failed to meet the diagnostic eligibility criteria. Eligibility is established in the diagnostic area when an individual presents a diagnosis of an Intellectual Disability, or a related condition which constitutes a severe, and chronic disability with concurrent substantial deficits which manifested prior to age 22. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

As part of the I/DD Waiver application process, an IPE was completed on the Appellant which resulted in a diagnosis of Autism Spectrum Disorder, Level 2 requiring substantial supports and Global Developmental Delay. Charley Bowen, Psychological Consultant for the Bureau of Medical Services, testified that Autism is a related condition for eligibility for I/DD Waiver services; however, the diagnosis must be severe. Mr. Bowen testified that an Autism diagnosis meets the severity threshold for program eligibility when the diagnosis is evaluated at a Level 3, requiring very substantial supports on the Diagnostic and Statistical Manual of Mental Disorders. Mr. Bowen addressed that the IPE conducted by Eastern Psychological Services which documents that [REDACTED] was recently diagnosed at [REDACTED] with Autism Spectrum Disorder Level 3.” Mr. Bowen testified that the report and corresponding Level 3 Autism diagnosis from [REDACTED] was not included in the documentation review to determine the Appellant’s eligibility for the I/DD Waiver Program. Mr. Bowen indicated even if the documentation from [REDACTED] was provided, narrative descriptions would be needed to support the documented diagnosis. Based on the presented diagnosis, the Respondent denied the Appellant’s application because she failed to meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or a related condition, which is severe.

[REDACTED], the Appellant’s mother, contends that the Appellant meets eligibility criteria because she has a related condition of Autism. [REDACTED] testified that the Appellant has been diagnosed with Autism, Level 3, by [REDACTED] and that information was provided during the IPE, but believes that due to a clerical error, the information was not provided during the I/DD Waiver eligibility

determination. [REDACTED] reviewed documentation provided with the eligibility review citing that her daughter requires support and instruction of many aspects of daily life. [REDACTED] indicated that her daughter requires assistance and constant intensive instruction in every substantial adaptive life area which is assessed for program eligibility. Both [REDACTED] and the Appellant's witness reviewed documentation provided during the application process indicating that the Appellant experiences significant delays in many of the life areas.

There is no question that the Appellant experiences substantial limitations in many of the life areas assessed for the I/DD Waiver Program. However, the Appellant did not meet the diagnostic criteria of program eligibility by presenting an eligible diagnosis of an Intellectual Disability or a related condition which is severe. While the Appellant presented an Autism diagnosis, which is considered a related condition for program eligibility, evidence did not support that such diagnosis was severe in nature.

Because the Appellant failed to meet the diagnostic criteria for program eligibility, the Respondent's decision to deny the Appellant's application for services under the I/DD Waiver program is affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that 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.
- 2) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, which does not meet the severity criteria in policy.
- 3) The Appellant failed to meet the diagnostic criteria threshold for services under the I/DD Waiver program.

DECISION

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

ENTERED this ____ day of December 2023.

Eric L. Phillips
State Hearing Officer