



**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 7, 2023

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 23-BOR-3031

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-3031

■ **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 November 2, 2023, on a timely appeal filed on September 25, 2023.

The matter before the Hearing Officer arises from the August 28, 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 his mother and guardian, ■. Appearing as a witness for the Appellant was ■. 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 August 28, 2023 |

D-3 Independent Psychological Evaluation
Evaluation Date: August 1, 2023

D-4 WV Birth to Three Evaluation/Assessment Summary Report
Evaluation Date: April 19, 2022

Appellant's Exhibits:

A-1 Letter from [REDACTED] dated October 31, 2023

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, a three-year old child, 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 August 28, 2023, denying the Appellant's application. (Exhibit D-2)
- 5) This notice (Exhibit D-2) provided the basis for the denial as "Documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver Program of intellectual disability or a related condition which is severe."
- 6) The Appellant was assessed by WV Birth to Three in an evaluation (Exhibit D-4) conducted on April 19, 2022.
- 7) The Appellant's age was 1 year, 9 months, at the time of this evaluation (Exhibit D-4).
- 8) The Appellant was rated using the Childhood Autism Rating Scale – Second Edition, Standard Version (CARS2-ST), obtaining a Total Raw Score of 37. (Exhibit D-4)
- 9) The evaluating psychologist noted that the Appellant's CARS2-ST results met the criteria "...for a diagnosis of Autism Spectrum Disorder, Level 3," and listed a medical condition of Autism Spectrum Disorder, Level 3. (Exhibit D-4)

- 10) An Independent Psychological Evaluation (Exhibit D-3) of the Appellant was conducted on August 1, 2023, when the Appellant's age was 3 years, 1 month.
- 11) During this evaluation (Exhibit D-3), the Gilliam Autism Rating Scale – 3 (GARS-3) was utilized to measure the likelihood and severity of Autism Spectrum Disorder (ASD) for the Appellant.
- 12) The Appellant's GARS-3 results produced an Autism Index of 90, corresponding to "Probability of ASD" noted as "very likely," and a noted severity level of two (2). (Exhibit D-3)
- 13) The Appellant was diagnosed with *Autism Spectrum Disorder, With Accompanying Language Impairment, Criteria A-Level 2, Criteria B-Level 1*. (Exhibit D-3)
- 14) Autism Spectrum Disorder (ASD) is a potentially eligible diagnosis, depending on its severity.
- 15) An ASD diagnosis must be at Level 3 to meet the severity component of the related condition definition in policy.
- 16) A letter (Exhibit A-1) from [REDACTED] noted that the Appellant "...exhibits significant delays in his speech, feeding, social behaviors, as well as some motor skills."
- 17) The letter (Exhibit A-1) did not provide the basis for establishing the delays noted in his remarks, or any testing used to provide standard scores for quantifying the noted delays.

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."

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 an unmet diagnostic component. The Appellant must have a diagnosis of Intellectual Disability or a related condition which is severe. The Appellant's diagnosis of ASD, which is a potentially eligible diagnosis, was disputed by the parties.

The Respondent contended the ASD diagnosis comes with a severity level, and the Level 2 diagnosis does not meet the policy definition of a "...related condition which constitutes a severe and chronic disability." Mr. Bowen testified that a Level 3 diagnosis, the most severe, meets this requirement, but Level 2 or Level 1 diagnoses do not. Ultimately, this fact was determined by the weight given to expert testimony. Mr. Bowen is a licensed psychologist with experience working with both the population and the testing instrument.

The Appellant was apparently given an ASD, Level 3 diagnosis on a WV Birth to Three assessment (Exhibit D-4), but the more recent diagnosis of the Appellant produced a diagnosis of ASD below Level 3 (Criteria A at Level 2, and Criteria B at Level 1) (Exhibit D-3). The more recent diagnosis is given significantly more weight in determining the Appellant's ASD severity for the following reasons: because the Appellant is very young, the more recent evaluation is a far more accurate portrait of his current development, and because expert testimony from the Respondent's Mr. Bowen noted that intellect is not "crystallized" until 7 to 9 years of age (giving greater value to newer reports until that age). For these reasons, the more recent diagnosis of ASD is more persuasive, and the Appellant does not have a diagnosis of a related condition which is severe and chronic.

With an unmet diagnostic component 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 this basis is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have a diagnosis of a related condition which is severe and chronic, he did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) 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 December 2023.

**Todd Thornton
State Hearing Officer**