



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH  
Office of the Inspector General  
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP  
Cabinet Secretary**

**Christopher G. Nelson  
Interim Inspector General**

January 31, 2024



Re: [REDACTED], A PROTECTED INDIVIDUAL v WV DHHR  
ACTION NO.: 23-BOR-3557

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 Human Services. 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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: Kerri Linton, Psychological Consultation & Assessment  
Stacy Broce, Bureau for Medical Services

BEFORE THE WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW

IN THE MATTER OF:

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 23-BOR-3557

WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES BUREAU FOR  
MEDICAL SERVICES,

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 17, 2024 on an appeal filed November 29, 2023.

The matter before the Hearing Officer arises from the November 20, 2023 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by his mother, ■ All witnesses were sworn and the following documents were admitted into evidence.

\*\* Observing for the Respondent was Charlie Bowen, Psychological Consultation & Assessment (PC&A).

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-2 BMS Notice, dated November 20, 2023
- D-3 Independent Psychological Evaluation (IPE), dated October 12, 2023
- D-4 Comprehensive Psychological Evaluation, dated August 18, 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) An application was made on behalf of the Appellant for services under the I/DD Waiver Program.
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDDW Program, including eligibility determination. (Exhibit D-2)
- 3) On August 18, 2022, [REDACTED] a Licensed Psychologist, completed an Comprehensive Psychological Evaluation (CPE) on the Appellant. (Exhibit D-4)
- 4) The August 18, 2022, CPE lists a diagnosis of Autism Spectrum Disorder, Level 2, requiring substantial support with deficits in social communication and support in restricted, repetitive behaviors. (Exhibit D-4)
- 5) On October 12, 2023, [REDACTED], a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-3)
- 6) The October 12, 2023, IPE lists a diagnosis of Autism Spectrum Disorder, Level 2, with cognitive and language deficits, requiring substantial supports. (Exhibit D-3)
- 7) On November 20, 2023, the Respondent issued a notice advising the Appellant that he was ineligible for IDDW Program benefits because “documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a related condition which is severe.” (Exhibit D-2)
- 6) The Respondent’s November 20, 2023, determination was based on the review of “October 12, 2023 IPE; August 18, 2022 Comprehensive Psychological Evaluation” (Exhibit D-2)

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual § 513.6 provides, in part:**

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent

Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement, and any other documentation deemed appropriate.

**BMS Manual § 513.6.2 provides, in part:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and
- Requirement of ICF/IID Level of Care

**BMS Manual § 513.6.2.1 provides, in part:**

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 IDDW 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 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 under Section 513.6.2.2, Functionality.

**BMS Manual § 513.6.2.2 provides, in part:**

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 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.

## DISCUSSION

Pursuant to policy, in order for an applicant to be found eligible for the I/DD Waiver Program, an individual must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). Criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. Once an eligible diagnosis is established, the Respondent then evaluates to determine if the Appellant meets the functional criteria for the I/DD Waiver Program. An adaptive behavior assessment is then used to identify if the Appellant exhibits substantial adaptive deficits in the six (6) major life areas (*self-care, communication, learning, mobility, self-direction, and capacity for independent living*).

Policy defines substantial adaptive deficits as standardized scores of three (3) standard deviations below the mean, or less than one percentile (1%), when derived from a standardized measure of adaptive behavior. The applicant must also require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living is required. Failure to meet any one of the eligibility categories results in a denial of program services.

During an October 12, 2023, IPE, a Developmental Profile - 4 (DP-4) was administered. According to the report, the Appellant was significantly delayed in all areas. In determining the severity of the Appellant's autism, the Respondent considered the Gilliam Autism Rating Scale-3 (GARS-3) Index Score of 116. Kerri Linton (Ms. Linton), consulting psychologist for the Respondent, explained that while a score of 116 does indicate a "very likely probability of Autism Spectrum Disorder, level 3," the administering psychologist rendered a diagnosis of Autism Spectrum Disorder, Level 2, with cognitive and language deficits, requiring substantial supports. Ms. Linton testified that while Autism is, if severe, considered a related condition that may qualify an applicant for Waiver eligibility, the Appellant's diagnosis of Autism Spectrum Disorder, Level 2 did not meet the criteria for a severe related condition. In order to meet the severity level for IDD Program medical eligibility, the Appellant had to be diagnosed with Autism Spectrum Disorder, Level 3. An ABAS-3 was also administered in order to evaluate the Appellant's adaptive functioning level. However, because the Appellant was not found to have an eligible diagnosis, these scores were not considered.

Ms. Linton further testified that a CPE was completed by [REDACTED] on August 18, 2022. A Developmental Assessment of Young Children, Second Edition (DAYC-2) was administered to assess the Appellant's cognitive functioning. The Appellant's DAYC-2 assessed the Appellant with a *cognitive* standard score of 75, with a General Developmental Index of 71. Additionally, a Childhood Autism Rating Scale, Second Edition (CARS2-ST) evaluation was completed. The Respondent testified that the Appellant was assessed

with a Total Raw Score of 37 – falling within the severe symptoms of Autism Spectrum Disorder. The August 18, 2022 evaluation diagnosed the Appellant with Autism Spectrum Disorder, Level 2, requiring substantial support with deficits in social communication and support in restricted, repetitive behaviors. The rendering psychologist further noted that the Appellant’s diagnosis is based on the CARS-2 scores indicating a Total Score of 37.0, placing the Appellant within the Severe Symptoms for an Autism Spectrum Disorder range, and through clinical observations that were exhibited during the interview and testing process.

Ms. Linton concluded that while both assessments did provide results ranging in the Autism Spectrum Disorder, Level 3 range, both psychologists diagnosed the Appellant with Autism Spectrum Disorder, Level 2, which does not meet the medical eligibility criteria of a qualifying diagnosis for IDDW Program eligibility purposes. The Appellant’s representative [REDACTED] testified that even though the Appellant is 3 years old, he has significant functioning impairments related to his Autism diagnosis. [REDACTED] further testified that because the Appellant’s Autism is so severe, and because she is a single parent, she is unable to provide the extra support the Appellant needs and would benefit greatly from the assistance provided by the IDDW Program.

To meet medical eligibility for the IDDW Program, the Appellant must have an intellectual disability with concurrent substantial deficits, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits, that require an ICF/IID level of care. While policy lists Autism as a related condition that could potentially qualify an applicant for IDDW services, the Appellant had to have a *diagnosis* [emphasis added] of Autism Spectrum Disorder, Level 3 [emphasis added]. Although both assessments did provide results ranging in the Level 3 area, the diagnosis of Autism Spectrum Disorder, Level 3 was not rendered. Because no evidence was entered to establish that the Appellant has an Autism Spectrum Disorder, Level 3 diagnosis, intellectual disability, or another related condition which is severe, the Appellant’s diagnosis did not meet the criteria established by policy for Medicaid IDDW Program purposes.

### **CONCLUSIONS OF LAW**

- 1) To meet medical eligibility for the IDDW Program, the Appellant must have a diagnosis of an Intellectual Disability or a related condition which is severe.
- 2) To meet the criteria for a related condition which is severe, an Autism diagnosis must be Level 3.
- 3) The preponderance of evidence failed to establish that the Appellant has a diagnosis of an Intellectual Disability or related condition which is severe.
- 4) Because the evidence failed to establish that the Appellant met the medical eligibility criteria for a qualifying diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the IDDW Program is affirmed.

## **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 31st day of January 2024.

---

**Angela D. Signore**  
State Hearing Officer