



**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**

February 8, 2024



RE: ██████████ A PROTECTED INDIVIDUAL, v. WVDohS
ACTION NO.: 24-BOR-1028

Dear ██████████:

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

cc: Stacy Broce, WVDohS
Kerri Linton, PC&A
Janice Brown, Acentra

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 24-BOR-1028

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on February 7, 2024.

The matter before the Hearing Officer arises from the October 30, 2023, decision by the Respondent to deny I/DD Waiver Medicaid benefits.

At the hearing, the Respondent appeared by Charley Bowen, Long-Term Care Clinical Consultant, Psychological Consultation & Assessment (PC&A). The Appellant was present and was represented by ■, Adult Protective Service Worker, West Virginia Department of Human Services. Appearing as witnesses for the Appellant were ■. 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 October 30, 2023
- D-3 Independent Psychological Evaluation dated October 23, 2023
- D-4 Psychiatric Evaluation dated August 20, 2023
- D-5 ■ School Student Progress Reports (1989 and 1990)
- D-6 ■ Student Report Cards (Class 12)
- D-7 ■ School Grade Card (12th grade)
- D-8 ■ School Progress Report (7th grade)

- D-9 [REDACTED] School Progress Report (6th grade)
- D-10 [REDACTED] Student Grade Report (11th grade)
- D-11 Information from [REDACTED] School from the 1988-1989 and 1989-1990 academic years
- D-12 Appellant's medication list
- D-13 History and Physical Assessment from [REDACTED] dated July 5, 2018
- D-14 Notice of Decision dated November 7, 2014
- D-15 Independent Psychological Evaluation dated October 2, 2014
- D-16 Notice of Decision dated January 14, 2014
- D-17 Independent Psychological Evaluation dated January 3, 2014

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 50 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 October 30, 2023, indicating that her I/DD Waiver application was denied (Exhibit D-2).
- 3) The October 30, 2023, notice states that the Appellant's I/DD Waiver application was denied because documentation submitted for review "does not support the presence of a potential eligible diagnosis of Intellectual Disability with concurrent substantial adaptive deficits during the developmental period and prior to the onset of a Major Mental Illness. Mental Illness is specifically excluded as a potential eligible diagnosis" (Exhibit D-2).
- 4) An Independent Psychological Evaluation (IPE) was completed for the Appellant on October 23, 2023 (Exhibit D-3).
- 5) The IPE lists diagnoses of Mild Intellectual Disability; Bipolar 1 Disorder, most recent episode manic, mild; Post Traumatic Stress Disorder, chronic; and Other Specified Personality Disorder, borderline and antisocial traits by history (Exhibit D-3).
- 6) The Appellant received scores ranging from 63 to 76 on the Wide Range Achievement Test 5 (WRAT 5) administered in conjunction with the October 2023 Psychological Evaluation. The Respondent considers scores of 55 and below as eligible scores for the I/DD Waiver Program (Exhibit D-3).

- 7) The Appellant's WRAT 5 scores are consistent with a mild intellectual disability (Exhibit D-3).
- 8) The Appellant attained a full-scale IQ score of 53 during the October 2023 psychological evaluation, but poor persistence likely affected her score. The examiner concluded that she likely functions in "a mild intellectual disability range."
- 9) The Appellant was enrolled in special education classes while attending school (Exhibits D-3, D-15, and D-17).
- 10) The Appellant worked briefly as a pizza restaurant waitress and a fast-food restaurant employee (years unknown) (Exhibit D-3).
- 11) The Appellant was charged with five counts of sexual assault, was committed to [REDACTED] in 2013, and has been at [REDACTED] since 2018 (Exhibit D-3).
- 12) The Appellant has a history of verbal aggression toward hospital staff (Exhibits D-3 and D-4).
- 13) The Appellant's IQ was estimated to be between 70 and 80 on a Psychiatric Evaluation dated August 20, 2023 (Exhibit D-4).
- 14) The Appellant has five children who were removed from her care by Child Protective Services (Exhibit D-4).
- 15) The Appellant received scores ranging from 50 to 62 on the Wechsler Adult Intelligence Scale-Fourth Edition completed during an IPE on October 2, 2014. Her IQ was estimated to be 48. However, the evaluator believed the test results were an underestimate of the Appellant's true intellectual ability, as previous test results indicated that she has Borderline Intellectual Functioning (Exhibit D-15).
- 16) The Appellant received a standard score of 55 in word reading on the WRAT administered during the October 2014 evaluation. She refused to complete subtests of the instrument and the score was deemed inconsistent with previous test results that indicated a fourth-grade reading level. The evaluator considered the test results invalid (Exhibit D-15).
- 17) The Appellant's history of mental health treatment began in second grade when she was diagnosed with Attention Deficit/Hyperactivity Disorder (AD/HD) (Exhibit D-15).
- 18) The Appellant can read at a fourth-grade level and met the criteria for Borderline Intellectual Functioning based on psychological testing from November 2012 (Exhibit D-15).

- 19) The Appellant received an Axis I diagnosis of unspecified bipolar and related disorder (by history) and an Axis II diagnosis of Borderline Intellectual Functioning (by history) on the October 2014 Psychological Evaluation (Exhibit D-15).
- 20) The Appellant received WRAT scores ranging from 59 to 88 during an Independent Psychological Evaluation completed on January 3, 2014 (Exhibit D-17).
- 21) The Appellant receives Supplemental Security Income (SSI) benefits and is her own payee (Exhibit D-17).
- 22) The Appellant received the following Axis I diagnoses on the January 2014 Psychological Evaluation: Bipolar 1 Disorder, AD/HD, Personality Disorder NOS, Psychotic Disorder NOS, PTSD, nicotine dependence (in remission), cannabis abuse (in remission), and “Rule-Out Borderline Intellectual Functioning.” Her Axis II diagnosis was Mild Mental Retardation (Exhibit D-17).
- 23) The Appellant received low grades while in school, but no documentation or test results were provided to confirm her level of intellectual functioning during the developmental period (Exhibits D-5 through D-11).

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 75th 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 diagnosis.

The Respondent's representative, Charley Bowen, Long-Term Care Clinical Consultant for PC&A, testified that the evidence provided for review does not support a potential eligible diagnosis of a severe Intellectual Disability which manifested during the developmental period (prior to age 22). He stated that mental illness is excluded as a potentially eligible diagnosis for the I/DD Waiver Program.

The Appellant testified that she was enrolled in special education classes in school and believes she was considered mentally retarded. She stated that she cannot function without assistance. [REDACTED] Case Manager at [REDACTED], testified that the Appellant was in school during the 1970s and 1980s, and that it is difficult to obtain school records from that period since records are often destroyed after several years. She voiced concern about the cognitive testing instruments used during the 1970s and 1980s. [REDACTED] testified that she has been the Appellant's psychiatrist for two years and does not believe that the Appellant could live independently. She does not believe that mental illness has caused the Appellant's cognitive issues, as the Appellant was enrolled in special education classes in school.

While the Appellant clearly faces many challenges, documentation submitted for review does not confirm the presence of an eligible diagnosis that manifested prior to age 22. Therefore, the Respondent's decision to deny I/DD Waiver Medicaid benefits is affirmed.

CONCLUSIONS OF LAW

- 1) To qualify for I/DD Waiver Medicaid benefits, an individual must meet the diagnostic, functionality and severity criteria identified in policy.
- 2) Diagnostic criteria dictates that an individual must have a severe and chronic intellectual disability with concurrent substantial deficits manifested prior to age 22.
- 3) While the Appellant was enrolled in special education classes in school, there is no documentation to verify her level of intellectual disability during the developmental period.

- 4) The level of intellectual disability that existed prior to the onset of mental illness cannot be ascertained based on the evidence provided.
- 5) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic criteria 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 8th Day of February 2024.

**Pamela L. Hinzman
State Hearing Officer**