



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

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

**Christopher G. Nelson
Interim Inspector General**

February 2, 2024

[REDACTED]

RE: [REDACTED] a Juvenile v. WV DoHS
ACTION NO.: 23-BOR-3698

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: WV DoHS BMS, PC&A, KEPRO

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

██████████ **A JUVENILE,**

Appellant,

v.

Action Number: 23-BOR-3698

**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 JUVENILE. 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 31, 2024.

The matter before the Hearing Officer arises from the November 14, 2023 decision by the Respondent to deny I/DD Waiver Program services.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by ██████████ All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.3
- D-2 Denial Notice, dated November 14, 2023
- D-3 Independent Psychological Evaluation, evaluation date October 31, 2023
- D-4 Initial denial notice, dated August 25, 2023
- D-5 Independent Psychological Evaluation, evaluation date August 14, 2023
- D-6 ██████████ evaluation dated August 1, 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 is a four-year-old whose mother applied for the Intellectual/Developmental Disabilities Waiver services program (I/DD) on behalf of the Appellant.
- 2) The Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on August 14, 2023 by licensed psychologist [REDACTED] who diagnosed the Appellant with Autism Spectrum Disorder Level 2, Global Developmental Delay, Oppositional Defiant Disorder, and Language Disorder. (Exhibit D-5)
- 3) The Respondent denied the Appellant's application for the I/DD Waiver Program in a Notice of Decision dated August 25, 2023. (Exhibit D-4)
- 4) The August 25, 2023 Notice cited the denial as "Documentation submitted for review does not indicate an eligible diagnosis for IDD Waiver program of Intellectual Disability or a Related Condition which is severe". (Exhibit D-4)
- 5) The August 25, 2023 Notice advised the Appellant of his right to a second psychological evaluation, within 60 calendar days, if the decision was based on medical reasons. (Exhibit D-4)
- 6) The Appellant exercised his right to a second psychological evaluation.
- 7) On October 31, 2023, a second IPE was completed by [REDACTED] PhD, BCBA, ABPP who diagnosed the Appellant with Autism Spectrum Disorder, social communication and restricted, repetitive behavior requiring substantial support (level 2), with accompanying cognitive impairment, Global Developmental Delay, and Behavioral Concerns. (Exhibit D-3)
- 8) On November 14, 2023, the Respondent denied the Appellant's application, explaining that "Documentation submitted for review does not support an eligible diagnosis for IDD Waiver program of Intellectual Disability or a Related Condition which is severe." (Exhibit D-2)

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, states: To be medically eligible, the applicant must require a 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 MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

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.

Bureau for Medical Services Provider Manual §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, if severe and chronic in nature, may 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 in Section 513.6.2.2, Functionality.

Bureau for Medical Services Provider Manual §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.

Bureau for Medical Services Provider Manual §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

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) Diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) Functionality of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) Active Treatment - the need for active treatment, 4) ICF/IID Level of Care need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA determines if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding about the Appellant's I/DD Waiver eligibility. The Respondent must show by a preponderance of evidence that it correctly denied the Appellant's I/DD Waiver application.

The Respondent denied the Appellant's application because he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Appellant requested a fair hearing to appeal the Respondent's decision.

The Respondent showed by a preponderance of evidence that the Appellant did not meet the diagnosis criteria for program eligibility.

Kerri Linton, the Respondent's consulting psychologist from PC&A, testified that Autism Spectrum Disorder (ASD) can be considered a related condition under the diagnostic criteria, but the diagnosis must be severe with concurrent substantial deficits. Ms. Linton explained that for program eligibility purposes, ASD meets the severity criteria when it is assessed at a Level 3. On two separate IPEs conducted (one in August 2023 and the other in October 2023), the Appellant was diagnosed ASD, Level 2, in addition to Global Developmental Delay (GDD). Ms. Linton testified that the Appellant's diagnosis of GDD is not considered as an Intellectual Disability for program eligibility purposes. Ms. Linton further explained that the diagnosis of GDD is given to children under the age of 5 years and because there is an age cap to this diagnosis, it does not meet the policy criteria of being chronic and lifelong. The Appellant was also diagnosed with ASD Level 2 in an evaluation he underwent in 2022 with [REDACTED].

The Appellant's mother, [REDACTED], testified that the Appellant appears to be regressing from the levels of functioning he previously demonstrated. The Appellant has begun to have elopement issues and needs one-on-one supervision. [REDACTED] failed to understand why the level of his functioning did not qualify him for the I/DD Waiver Program. Ms. Linton explained that all I/DD Waiver Program applicants must meet program criteria sequentially. If the diagnostic criteria is not met, then the functionality criteria is not considered. Thus, because it was determined that the Appellant's Level 2 ASD and GDD diagnoses do not meet the severity level required for the diagnostic component of program eligibility, his functionality was not considered.

The information submitted before the MECA failed to demonstrate that the Appellant currently meets the severity level needed to meet the diagnostic criteria for program eligibility. Therefore, the Respondent's denial of the Appellant's I/DD Waiver program application is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have an eligible diagnosis for the I/DD Waiver Program, the diagnostic component of medical eligibility is unmet.

- 2) Because the diagnostic component is not met, the Appellant did not meet medical eligibility for the I/DD Waiver program.
- 3) Because the Appellant did not meet the medical eligibility requirements, the Respondent correctly denied the Appellant's application for 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 I/DD Waiver Program application.

ENTERED this 2nd day of February 2024.

Lori Woodward, Certified State Hearing Officer