



**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 18, 2024

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL, v. WVDOHS  
ACTION NO.: 23-BOR-3700

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 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, KEPRO

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

■, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 23-BOR-3700**

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES  
BUREAU FOR CHILDREN AND FAMILIES,**

**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 January 17, 2024.

The matter before the Hearing Officer arises from the November 1, 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 represented by his mother, ■. 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 November 1, 2023
- D-3 Independent Psychological Evaluation dated September 28, 2023
- D-4 Birth Parents Background Information
- D-5 Medical documentation from ■ Specialty dated September 20, 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, who is currently 3 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 November 1, 2023, indicating that his I/DD Waiver Program application was denied (Exhibit D-2).
- 3) The November 1, 2023, notice states that the Appellant's I/DD Waiver application was denied because 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" (Exhibit D-2).
- 4) An Independent Psychological Evaluation (IPE) was completed for the Appellant on September 28, 2023 (Exhibit D-3).
- 5) The IPE lists diagnoses for the Appellant of Autism Spectrum Disorder, with Language and Intellectual Impairment; Criteria A-Level 2; Criteria B-Level 2; and Global Developmental Delay (Exhibit D-3).
- 6) The Appellant was rated at a severity level 3 on the Gilliam Autism Rating Scale-3 based on information provided by his mother; however, the psychologist noted that the score overestimated the Appellant's Autism Spectrum Disorder symptoms.
- 7) Medical documentation from [REDACTED] Specialty dated September 20, 2022, lists a diagnosis of Autism Spectrum Disorder with accompanying language impairment requiring substantial support (Level 2) and fetal exposure to drug (Exhibit D-5).

### **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 75<sup>th</sup>

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.

The Respondent's representative, Charley Bowen, Long-Term Care Clinical Consultant for PC&A, testified that the Appellant must be diagnosed as having Level 3 Autism Spectrum Disorder in order to meet severity requirements as a related condition for the I/DD Waiver Program. While the Appellant displayed developmental delays on the psychological evaluation, Mr. Bowen indicated that psychologists often use caution when attempting to diagnose intellectual disability with a young child as IQ does not normally crystallize until around ages 6 to 8.

The Appellant's mother testified that her son is non-verbal and non-social. He has outbursts and does not understand pain. She is attempting to enroll him in pre-school. Mr. Bowen indicated that the school would provide more testing and that the Appellant can reapply for the I/DD Waiver Program at any time.

While the Appellant clearly faces many challenges, the documentation submitted for review does not confirm the presence of an eligible diagnosis for I/DD Waiver eligibility. 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) While the Appellant has been diagnosed with Autism Spectrum Disorder, his level of autism does not meet severity requirements to qualify as an eligible diagnosis for the I/DD Waiver Program.
- 3) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on medical ineligibility 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 18<sup>th</sup> Day of January 2024.**

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**Pamela L. Hinzman**  
**State Hearing Officer**