

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

S [REDACTED] Y [REDACTED],
 Petitioner,

v.

**DEPT. OF BEHAVIORAL HEALTH &
 DEVELOPMENTAL DISABILITIES,
 Respondent.**

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Docket No.: [REDACTED]
 [REDACTED]-OSAH-DBHDD-NOWCOMP-33-
 Woodard

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FINAL DECISION

I. INTRODUCTION

Petitioner S [REDACTED] Y [REDACTED], by and through his parents S [REDACTED] and J [REDACTED] Y [REDACTED], applied for New Options Waiver/Comprehensive Supports (“NOW/COMP”) services with the Department of Behavioral Health and Developmental Disabilities (“Department” or “Respondent”). The Respondent denied the Petitioner’s application, and he appeals. An evidentiary hearing took place before the undersigned Administrative Law Judge (“ALJ”) on November 28, 2021, at the Office of State Administrative Hearings (“OSAH”), Atlanta, Georgia. Petitioner appeared, and his interests were represented by his parents, who also testified. Respondent was represented by Ashlee Thompson, Attorney at Law, Atlanta. The record was held open so the Respondent could review and assess the records provided by the Georgia Vocational Rehabilitation Services Agency or its contractor. After completing its review, the Respondent advised Petitioner and the ALJ that its prior decision to deny Petitioner’s NOW/COMP application was affirmed. The vocational report and Respondent’s reply were added to the hearing record, which was thereupon closed.

For the reasons stated below, the Respondent’s denial of Petitioner’s application for NOW/COMP is **AFFIRMED**.

II. FINDINGS OF FACT

1.

Petitioner S [REDACTED] Y [REDACTED] was born to S [REDACTED] and J [REDACTED] Y [REDACTED] on March 12, 2001. Mrs. Y [REDACTED] is an occupational therapist, and Mr. Y [REDACTED] is a computer engineer. S [REDACTED]'s birth was described by his parents as normal, but by age two they noticed that S [REDACTED] was not talking or making developmental progress as expected. S [REDACTED]'s pediatrician referred him to the Marcus Autism Center, and an early diagnosis was made of Progressive Developmental Disorder / Autism. He was assessed for both occupational therapy and speech therapy services. S [REDACTED] first entered the [REDACTED] County School District as a special needs child at age three and was provided services including speech therapy under an Individualized Educational Program ("IEP"). S [REDACTED] continued to receive services and special education programming through an IEP until he graduated from [REDACTED] High School. (Testimony of S [REDACTED] and J [REDACTED] Y [REDACTED]).

2.

S [REDACTED] was eligible for Medicaid under the Deeming Waiver Program, which is commonly known as the "Katie Beckett" class of assistance. His parents knew that his eligibility for Katie Beckett would end on March 12, 2019, his 18th birthday. On November 8, 2018, the parents filed an application with Respondent for Medicaid coverage under the NOW/COMP waiver program. The parents provided Respondent with supporting documentation including S [REDACTED]'s IEP from February 2018, and a Psychoeducational Report prepared in October 2018 by [REDACTED] County School District. The parents testified that they also provided a copy of the Comprehensive Vocational Evaluation prepared in December 2018 by Metro-Atlanta Vocational Solutions, LLC, on behalf of the Georgia Vocational Rehabilitation Services Agency, but the credible testimony of

Respondent's witnesses is that this Evaluation was not reviewed by any of Respondent's employees prior to the hearing. (Testimony of S [REDACTED] and J [REDACTED] Y [REDACTED]; testimony of Elise Beumer; testimony of Kelli Bishop; Respondent Exhibits 1, 8, 9; Petitioner Exhibit 1).

3.

The initial prescreening of S [REDACTED]'s NOWCOMP application was performed by Dr. Ioannis Ioannou, Psy.D., a psychologist with Respondent's Region I Intake and Evaluation Office. Dr. Ioannou made several significant findings based on the school district's Psychoeducational Report of October 2018:

- S [REDACTED] has a full-scale IQ of 70 according to the results of the Wechsler Adult Intelligence Scale (4th Ed.)
- He has a scaled score of 3 in Communication according to the Adaptive Behavior Assessment Scales (3rd Ed.), which indicates a significant deficit in this adaptive skill.
- His scaled scores in all other Adaptive Skills did not indicate a significant deficit.
- The teacher rating on the Gilliam Autism Rating Scales (3rd Ed.) provided a standard score of 86, which indicates a "very likely" probability that S [REDACTED] has Autism Spectrum Disorder. The parent rating provided a total standard of 69, which indicates Autism Spectrum Disorder is "probable."

Dr. Ioannou concluded that S [REDACTED] did not meet the minimum eligibility requirements for NOW/COMP, "[g]iven the lack of additional evidence of qualifying adaptive behavior deficits necessary to support eligibility...." (Testimony of Kelli Bishop; Respondent Exhibit 4).

4.

Dr. Donald Bowling, Ph.D., a licensed psychologist employed with DBHDD's Region 3 Intake and Evaluation Office, prepared a Second Opinion Psychological Review of Records Report dated December 26, 2018. Dr. Bowling reviewed the same records as Dr. Ioannou and agreed with her conclusion that S [REDACTED] did not meet the minimum criteria for NOW/COMP eligibility. (Testimony of Kelli Bishop; Respondent Exhibit 5).

5.

Based on the reports prepared by Dr. Ioannou and Dr. Bowling, Respondent denied S [REDACTED]'s application for NOW/COMP services. In a letter dated January 11, 2019, Elise Beumer, M.S., L.P.C., Regional Services Administrator for Developmental Disabilities for DBHDD's Region I Field Office, determined that S [REDACTED] did not meet the first criteria for NOW/COMP as he did not have an Intellectual Disability:

Records reviewed suggest S [REDACTED] is functioning at the borderline range of intelligence. Adaptive behavior functioning measures showed mild yet not significant deficits. Based on the information provided and reviewed, S [REDACTED] does not meet criteria for a diagnosis of an Intellectual Disability nor was such diagnosis provided in records reviewed.

Ms. Beumer stated that S [REDACTED] also did not have a diagnosis of a Developmental Disability closely related to Intellectual Disability, as the evidence that S [REDACTED] is on the Autism Spectrum is "inconclusive." Ms. Beumer went on to state that even if S [REDACTED] is on the Autism Spectrum, he did not have significant deficits in at least three of the following six adaptive behaviors: self-care, expressive and receptive language, learning, self-direction, mobility, and capacity for independent living. (Testimony of Elise Beumer; Respondent Exhibit 3).

6.

On February 5, 2019, Mrs. Y [REDACTED] requested a review by the Division of Developmental Disabilities. She wrote that “[w]e have done additional evaluations and the reports will be available in 8 weeks and will be submitted to DBHDD.” Sometime later, a Psychological Evaluation written by Dr. Steven A. Hobbs, Ph.D., a licensed psychologist practicing in Canton, Georgia, was submitted to Respondent. Dr. Hobbs’ evaluation was based on an in-person meeting with S [REDACTED] and both parents on February 2, 2019, during which four tests were administered. This report was given significant consideration by Respondent during the Division review process, and, during the hearing, S [REDACTED]’s parents emphasized the conclusions reached by Dr. Hobbs as supporting approval of the NOW/COMP application. (Testimony of S [REDACTED] Y [REDACTED]; Respondent Exhibit 11).

7.

The first test noted in Dr. Hobbs’ report is the Vineland Adaptive Behavior Scales, which “entailed an interview with caregivers to assess adaptive skills in several domains.” S [REDACTED] scored as follows on the Vineland:

- 38 on the Communication domain, below 1st percentile
- 47 on the Daily Living Skills domain, below 1st percentile
- 49 on the Socialization domain, below 1st percentile
- No score listed on the Motor Skills domain, but marked as below 1st percentile
- 44 on Overall Adaptive Behavior Composite Score

- Socialization and Receptive and Communication Skills-“At or below the 3 1/2-year age level
- Written Communication Skills- “at the nearly 7 year age-level,” his strongest subdomain

(Respondent Exhibit 11).

8.

The second test noted in Dr. Hobbs’ report is the Comprehensive Test of Nonverbal Intelligence (2nd Edition), or “CTONI-2.” S [REDACTED] scored as follows on this test:

- Composite IQ Score of 75, 3rd percentile
- Pictorial Composite IQ score of 71, 3rd percentile

(Respondent Exhibit 11).

9.

The third test in Dr. Hobbs’ report is the Adaptive Behavior Assessment System (3rd Ed.), or “ABAS.” The ABAS was conducted via interviews with S [REDACTED]’s caregivers. S [REDACTED] received the following Domain/Composite scores:

- 55 in Communication Skills, below 1st percentile
- 56 in Conceptual Skills, below 1st percentile
- 59 in Practical (Adaptive) Skills, below 1st percentile
- 62 in Social Skills, below 1st percentile
- 56 General Composite, below 1st percentile

S [REDACTED] received the following scores on the ABAS Subtests:

- 55 in Community Use, below 1st percentile
- 60 in Functional Academics, below 1st percentile
- 65 in Home Living, below 1st percentile
- 55 in Health and Safety, below 1st percentile
- 55 in Leisure, below 1st percentile
- 85 in Self Care, 16th percentile
- 55 in Self-Direction, 1st Percentile

Dr. Hobbs concluded that S [REDACTED]'s "severe deficits in adaptive skill areas . . . correspond to Age Equivalents of 8 ½ years and below." (Respondent Exhibit 11).

10.

The fourth—and final—test noted in Dr. Hobbs' report is the Childhood Autism Rating Scale (2nd Ed.), or "CARS2." This test was completed "based on reports from S [REDACTED]'s mother as well as clinician observation." Dr. Hobbs concluded that S [REDACTED] had a Symptom Score of 39.5. "Such a score is indicative of severe autism symptoms and provides confirmation of this young man's autism spectrum disorder diagnosis." Dr. Hobbs observed or had described to him the following "major features of autism:"

- Difficulties with emotion regulation
- Poor eye contact
- Limited age-appropriate play activities and spontaneous social interactions
- Restrictive/repetitive patterns of behavior
- Receptive, expressive, and pragmatic language difficulties

(Respondent Exhibit 11).

Dr. Kelli Bishop issued the Division Review on January 22, 2020. Dr. Bishop considered the documentation evaluated by Dr. Ioannou and Dr. Bowling, as well as Dr. Hobbs' report. Dr. Bishop concluded that S [REDACTED] was not eligible for NOW/COMP as "the review of [S [REDACTED]'s] records does not support a diagnosis of an intellectual disability." Dr. Bishop found the functioning ratings between the 2018 Psychoeducational Report and Dr. Hobbs' report differed by between 33 and 37 points, which far exceeded the confidence interval of between 2 and 5 points. Dr. Bishop was concerned that the evaluations performed by Dr. Hobbs showed such a significant decrease in adaptive behaviors from the Psychoeducational Report prepared in October 2018 that there must be an intervening event that led to his decline in function, even though the documentary record showed no such event had occurred in the four months between the [REDACTED] County School District evaluation and Dr. Hobbs' evaluations. Dr. Bishop wrote as follows regarding Dr. Hobbs' report:

There is a very large discrepancy between adaptive behaviors measured in October 2018 [by [REDACTED] County School District] and adaptive behaviors four months later, in February of 2019. This discrepancy is so large that it would not be expected to have occurred without some sort of trauma to the brain. There was no reported brain trauma. Given that neither his teacher nor his mother reported significant deficits in three of the specified areas of adaptive behavior in 2018 (results suggested capacity for at least borderline to average adaptive functioning) and there was no reported brain trauma between October of 2018 and February of 2019, Mr. Y [REDACTED] [sic] does not meet eligibility criteria for I/DD services.

(Testimony of Kelli Bishop; Respondent Exhibit 2).

S [REDACTED]'s parents filed a request for fair hearing after receiving the Division Review. (Respondent Exhibit 2).

13.

During the hearing, both parents testified that S [REDACTED] has significant functional impairments that appear to have worsened during the COVID-19 pandemic. They struggle to get S [REDACTED] to perform basic skills and need to provide more prompts and instructions before he finishes a task. It appears that when the [REDACTED] County School District switched from in-person learning to video classes to address COVID issues, S [REDACTED] became disinterested and would not pay attention. It also appears that his inability to interact with teachers and peers at school caused a major disruption in his daily routine. His parents testified that S [REDACTED] often engages in aimless wandering during the day and would not accomplish much unless they prompted him. As an example, without verbal prompting he might stay in the shower for an hour or more.

14.

S [REDACTED]'s parents have had him evaluated for employment through a sheltered work environment. They have approached several companies, including Publix and Walmart, and have worked with an agency to find suitable employment that S [REDACTED] can perform. They also worked with the Georgia Vocational Rehabilitation Agency, which referred S [REDACTED] for a Comprehensive Vocational Evaluation by Metro-Atlanta Vocational Solutions, LLC. An assessment was conducted on December 4, 2018, with Psychometrist Lindsay Cramer and Evaluator Kristina Frederickson, MS. LPC, CRC, NCC, PVE listed on the document. The assessment was performed with the purpose of providing “an evaluation of the client’s vocational capacity related to employment potential and training.” Of the tests conducted by Metro-Atlanta Vocational Solutions, only three-- the Wide Range Achievement Test 5 (“WRAT-5”), the Career Ability Placement Survey (“CAPS”), and Therapist’s Portable Skill Assessment Lab (“T-PAL”) -- resulted in a numerical score. The WRAT-5, “which measures an individual’s ability [to] compute solutions to math problems and read words,” provided the following data:

- Word Reading 60 Standard Score Below 1st percentile Grade Level 1.7
- Math Comprehension 71 Standard Score 2d percentile Grade Level 3.2

The CAPS is scored from the lowest of 1 to the highest of 9. A score of 5 “shows average ability when compared to others at an equal educational level.” S [REDACTED]’s CAPS evaluation resulted in the following scores:

- Spatial Relations- measures how well a person can visualize or think in three-dimensions and can mentally picture and position objects in space from two-dimension diagrams. Score: 5
- Perceptual Speed and Accuracy- measures how well a person can perceive accurately small detail within combinations of numbers, letters, and symbols rapidly and accurately. Score: 4
- Manual Speed and Dexterity- a motor coordination test to determine how well a person can make rapid and accurate movements with their hands. Score: 3

The T-PAL:

...is a battery of hands-on activities that assess an individual’s affective, cognitive, and psychomotor abilities in relation to performance requirements in vocational training programs, and to determine vocational competency or need for improvement. The client’s scores are normed on a population of high school students with intellectual disabilities and developmental disabilities.

S [REDACTED] scored as follows on the T-PAL:

- Block Design: 75th percentile on Speed, 99th percentile on Accuracy
- Circuit Board: 99th percentile on Speed, 10th percentile on Accuracy

(Petitioner Exhibit 1).

15.

Dr. Bishop reviewed the Comprehensive Vocational Evaluation and submitted an Addendum to her previous Division Review to the ALJ. Dr. Bishop concluded that:

The new documentation does not provide evidence of deficits in adaptive skills in three of the six specified areas, as required to meet eligibility requirements for intellectual/developmental disability services. The evaluation conducted was for the purposes of employment strengths and weaknesses. A thorough measure of adaptive testing was not administered. While Mr. [Y [REDACTED]] does appear to have some weaknesses, there was no evidence to support that these weaknesses were severe or broad enough to meet the waiver criteria of significant deficits in three or more of the six specified areas of adaptive functioning.

(Respondent Exhibit 12).

III. CONCLUSIONS OF LAW

1.

This matter concerns the denial of an application for NOW/COMP Waiver Programs participation and services; therefore, Petitioner bears the burden of proof. (Ga. Comp. R. & Regs. 616-1-2-.07). The ALJ required the Respondent to present its evidence first, but this did not shift the burden of proof from Petitioner. The standard of proof is a preponderance of the evidence. (Ga. Comp. R. & Regs. 616-1-2-.21).

2.

Title XIX of the Social Security Act allows states to create medical assistance plans partially funded by the federal government. (42 U.S.C. § 1396-1396v). The Respondent is the state agency responsible for adopting and administering Georgia's medical assistance plans. (O.C.G.A. § 49-4-142). The NOW/COMP Waiver Programs are some of several waiver programs offered under Georgia's State Plan pursuant to 42 U.S.C. § 1396n(d) and are included in Georgia's Home and Community-Based Waiver Programs for Elderly and Disabled Individuals.

3.

A State Plan may provide for individuals who, but for the provision of home or community-based services, require the level of care provided in a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities ("ICF/ID"). (42 U.S.C. § 1396a(a)(10)(A)(ii)(VI); 42 C.F.R. § 430.25(c)(2)).

4.

The NOW/COMP Waiver Programs are available only to those individuals who:

- A. Are categorically eligible Medicaid recipients; and
- B. Have a diagnosis of an intellectual disability and/or closely related developmental disability . . . ; and

- C. Are currently receiving the level of care provided in an ICF/ID which is reimbursable under the State Plan, and for whom home and community-based services are determined to be an appropriate alternative; or,
- D. Are likely to require the level of care provided in an ICF/ID that would be reimbursable under the State Plan in the absence of home and community-based services that are determined to be an appropriate alternative.

(Policies and Procedures for Comprehensive Supports Waiver Program (COMP) and New Options Waiver Program (NOW) General Manual §701 or “Manual.”)

5.

An evaluation of an individual’s eligibility for NOW/COMP services must include a psychological assessment for intellectual functioning and adaptive behavior based on individually administered, comprehensive, and standardized instruments. The psychological assessment must document that the applicant had an intellectual disability since birth or before age 18; or another closely-related condition since birth or before age 22, which requires similar services to those needed by people with an intellectual ability. (Manual § 702).

6.

A diagnosis of intellectual disability is defined by the following criteria: (1) onset before the age of 18 years; (2) significant limitations in at least one area of adaptive functioning; and (3) significantly sub-average general intellectual functioning as evidenced by an IQ score of about 70 or below. *Id.* The individual’s intellectual and adaptive functioning deficits “must be consistent with a diagnosis of intellectual disability and not solely the result of mental/emotional disorders, neurocognitive disorders, sensory impairments, substance abuse, personality disorder[s], specific learning disabilit[ies], or attention deficit/hyperactivity disorder.” *Id.*

7.

Petitioner presented insufficient evidence that his intellectual functioning was significantly sub-average. He obtained a full-scale IQ of 70 on the WAIS-IV evaluation conducted by the ██████ County School District in October 2018, when he was 17 years old. (Exhibit R-8). A second full-scale IQ of 75 was reached by Dr. Hobbs in February 2019. There are no other standardized testing results in the evidentiary record that would indicate Petitioner was ever measured at lower than 70 for a full-scale IQ. For this reason, Petitioner does not have an intellectual disability.

8.

Nevertheless, individuals with an IQ between 70 and 75 with appropriately measured, significant impairments to adaptive behavior that directly relate to an intellectual disability may also be considered as having an intellectual disability. (Manual, §702). There is no evidence in the hearing record that S ██████ has been scored on any test or evaluation with significant impairments to adaptive behavior.

9.

Individuals who have not been diagnosed with an intellectual disability may also be eligible for the NOW/COMP Waiver Programs if they have a condition that closely relates to an intellectual disability. Eligibility through a “Related Condition” is defined as having a diagnosis of a condition found to be closely related to an intellectual disability and attributable to: (a) severe forms of cerebral palsy or epilepsy; or (b) any other condition, other than mental illness, found to be closely related to an intellectual disability because this condition results in substantial impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability. Additionally, individuals seeking eligibility under the closely related criteria must exhibit limitations in adaptive functioning in three or more areas, and those adaptive

impairments must be directly related to the developmental disability and cannot be primarily attributed to: mental/emotional disorders, sensory impairments, substance abuse, personality disorder, specific learning disability, or ADHD. (Manual §705).

10.

In this case, when the evidence on record is reviewed in a light most favorable to S [REDACTED], it is likely that he is on the Autism Spectrum. Therefore, he can be considered to have a “closely related” condition, the first criterion required for NOW/COMP eligibility under Section 705 of the Manual.

11.

Based on S [REDACTED]’s diagnosis of Autism, the credible evidence does not indicate that he has significantly impaired adaptive functioning in at least three areas. The Psychoeducational Report prepared in October 2018 by [REDACTED] County School District only showed significant deficits in Communication. The report prepared in February 2019 by Dr. Hobbs appears to show significant deficits in three or more areas. As stated by Dr. Bishop, however, Dr. Hobbs’ report shows results that are far outside the confidence range and must be treated with less gravitas by the ALJ.

12.

In conclusion, S [REDACTED] is not eligible to receive services under the NOW/COMP Waiver Programs because he does not display significantly impaired adaptive functioning.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent’s decision to deny Petitioner’s application for NOW/COMP services is **AFFIRMED**.

SO ORDERED, this 1st day of March 2022.

M. Patrick Woodard

M. Patrick Woodard
Administrative Law Judge



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