



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 7, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 8, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny services under the Title XIX MR/DD Waiver Program.

In arriving at a decision, the State Hearings Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike. Eligibility for the MR/DD Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: In order to be eligible for the Title XIX MR/DD Home & Community-Based Waiver Program an individual must have both a diagnosis of mental retardation and/or a related condition(s), and require the level of care and services provided in an Intermediate Care Facility for Individuals with Mental Retardation and /or related conditions (ICF/MR Facility). (Title XIX MR/DD Home and Community Based Waiver Program Revised Operations Manual June 1, 2001).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny services under the Title XIX MR/DD Waiver Program.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Alva Fuzzy Page, Esq., Assistant Attorney General – B. M. S.
Scott Brady, Acting Program Coordinator – OBH&HF
[REDACTED] Esq. – WV EMS TSN

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v. **Action Number:** _____

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 7, 2005 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally scheduled on November 22, 2004 on a timely appeal, filed August 13, 2004. The hearing was rescheduled for various reasons on March 18, 2005; June 3, 2005 and; finally convened on August 8, 2005.

It should be noted here that the claimant was not receiving MR/DD Waiver Services at the time of the hearing. A pre-hearing conference was not held between the parties.

II. PROGRAM PURPOSE:

The Program entitled MR/DD Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

██████████ Esq., Program Attorney – West Virginia Emergency Medical Services
Technical Support (WV EMS TSN)

██████████ Licensed Psychologist – ██████████ Hospital*

Alva Fuzzy Page, Esq., Assistant Attorney General – Bureau for Medical Services (B.M.S.)

Linda Workman, M. A., Licensed Psychologist – Bureau for Medical Services (B.M.S.)

*Participated by conference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does ____ meet the medical eligibility criteria for the Title XIX MR/DD Waiver Services Program?

V. APPLICABLE POLICY:

Title XIX MR/DD Home and Community Based Waiver Program Revised Operations
Manual June 1, 2001

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Denial Letter dated 03/31/04

D-2 Annual Medical Evaluation (DD-2A) dated 07/24/03

D-3 ██████████ School Admission Guidelines

D-4 CFR § 435.1009 Definitions related to institutional status

D-5 Denial Letter dated 08/02/04

D-6 ██████████ School Discharge Summary dated 04/19/02

D-7 Integrated Summary dated 02/04/02

D-8 DSM-IV Diagnostic Features on Mental Retardation

D-9 ██████████ Hospital Psychiatric Evaluation dated 09/23/01

D-10 Educational Evaluation dated 10/05/00

D-11 ██████████ County Board of Education Psychological Report dated 05/15/97

D-12 Annual Medical Evaluation (DD-2A) dated 05/26/04

D-13 WVDHHR Comprehensive Evaluation (Triennial)(DD-3) dated 02/02/04 & 02/09/04

D-14 WVDHHR Comprehensive Evaluation (Triennial)(DD-3) dated 02/02/04 & 02/09/04.
Revision: 06/04/04

D-15 WVDHHR Social History (DD-4) dated 10/30/03

D-16 Mr. ██████████ letters dated 07/14/05 and 11/15/04, with Attached Exhibits

D-17 Title XIX MR/DD Waiver Program Eligibility Criteria dated 06/01/01

D-18 Mr. Page's "Closing Argument of Respondent, West Virginia Department of Health and Human Services

Claimants' Exhibits:

- C-1 Comprehensive Psychological Evaluation dated 06/04/04 (revision)
- C-2 ██████████ County Board of Education Psychological Evaluation dated 05/15/97
- C-3 Integrated Summary dated 02/04/02
- C-4 Social History dated 10/30/03
- C-5 Annual Medical Evaluation dated 05/26/04
- C-6 School Records
- C-7 Mr. ██████████ Closing Argument

VII. FINDINGS OF FACT:

- 1) Title XIX MR/DD Home and Community Based Waiver Program Revised Operations Manual June 1, 2001

Eligibility Criteria for the MR/DD Waiver Program are outlined in Chapter 1 of the Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual. The level of care criteria for medical eligibility is listed at Section I within this chapter and read as follows:

A. In order to be eligible for the Title XIX MR/DD Home & Community-Based Waiver Program an individual must have both a diagnosis of mental retardation and/or a related condition(s), and require the level of care and services provided in an Intermediate Care Facility for Individuals with Mental Retardation and /or related conditions (ICF/MR Facility).

[An Intermediate Care Facility is defined as one that provides services in an institutional setting for persons with mental retardation or related conditions. The primary purpose of the institution is to provide services to individuals who are in need of and who are receiving active treatment.]

B. The following list includes some examples of related conditions. This list does not represent all related conditions.

- 1) Autism or Pervasive Developmental Disability, NOS
- 2) Spina Bifida
- 3) Cerebral Palsy
- 4) Tuberous Sclerosis
- 5) Traumatic Brain injury and/or Spinal Cord injuries (occurring during the developmental period).

C. The evaluations must demonstrate that an individual has a diagnosis of mental retardation and/or a related condition which constitute a severe chronic disability which is:

- 1) Attributable to a mental or physical disability or a combination of both;
- 2) Manifested before a person reaches twenty-two (22) years of age;
- 3) Likely to continue indefinitely; and

4) Substantially limits functioning in three or more of the following areas of major life activities:

- a) Self-Care
- b) Learning (functional academics)
- c) Mobility
- d) Capacity for Independent Living (home living, social skills, health and safety, community use, leisure)
- e) Receptive and /or expressive Language
- f) Self-Direction
- g) Economic Self-sufficiency (Employment)

D. Level of care determinations are made by the Office of Behavioral Health Services (OBHS) and the Bureau for Medical Services (BMS) based on the medical, psychological and social evaluations (DD-2A, DD-3, and DD-4)

E. Evaluations must demonstrate the need for an ICF/MR level of care and services. This is demonstrated by the individual's need for intensive instruction, services, safety, assistance and supervision to learn new skills and increase independence in activities of daily living. The level of care and services needed must be the same level which is provided in an ICF/MR facility.

2) The Claimant in this case is Ms. _____, a twenty-one (21) year old female whose application was denied for the Title XIX MR/DD Waiver Program

3) The parties stipulated to the application process and eligibility criteria as found in the June 1, 2001 MR/DD Waiver Manual.

4) Mrs. Linda Workman is a Licensed Psychologist who has a contract with the Bureau for Medical Services to perform several different functions. One of the functions is to review and make determinations for the Title XIX MR/DD Waiver Program. Other duties include determining eligibility for ICF/MR Group Homes and, visiting and re-certifying individuals.

5) Mrs. Workman has a Masters Degree in Clinical Psychology from Marshall University. She was licensed to practice in 1981 and is also a Licensed School Psychologist. Mrs. Workman is in private practice, where she does individual psychotherapy and, psychological evaluations in many Counties within the State. Her time is divided between her private practice and the Bureau for Medical Services. It should be noted that Mrs. Workman has visited every ICF/MR Facility in the State of West Virginia.

6) Mrs. Workman reviewed Ms. _____'s eligibility packet for the Title XIX MR/DD Waiver Program and, determined that Ms. _____ did not meet the eligibility criteria. Mrs. Workman never interviewed Ms. _____ before determining her medical eligibility.

7) The first denial letter, (Exhibit D-1), was issued on March 31, 2004. The denial was based on the following:

The DD-2A does not provide an eligible diagnosis. Also, the documentation supports that the primary area of difficulty is associated with a serious mental illness. In addition, there are not substantial delays associated with mental retardation that would require the

active treatment typically provided in an ICF/MR facility. Finally, [REDACTED] School does not enroll/accept individuals whose primary diagnosis is mental retardation.

8) The DD-2A dated July 24, 2003, (Exhibit D-2), did not list any Physical or Neurological Abnormalities. The Mental Diagnosis was listed as Schizoaffective Disorder with a Fair Prognosis. Mental Retardation was not listed. The physician indicated that Ms. ____ requires the level of care and services provided in an Intermediate Care Facility for individuals with Mental Retardation and/or Related Conditions.

9) Information on the [REDACTED] School, (Exhibit D-3) states in part,

The [REDACTED] School is a secure, 24 hour residential treatment facility providing psychiatric/behavioral health services for severely emotionally disturbed adolescents. The program is designed to serve fourteen (14) males and eight (8) females between the ages of 12 and 18 years. Typically, these youth from all over West Virginia will have a major psychiatric disorder and will have experienced multiple failures in less restrictive environment elsewhere in the mental health system.

The [REDACTED] School Admission Guidelines state in part:

- Must be severely emotionally disturbed and require twenty-four (24) hour treatment which cannot be provided in a less restrictive environment.
- Must have intellectual capacity higher than mild mental retardation (IQ of 70 or above). According to Mrs. Workman they are looking at scores of 55 and below.
- Must be in an in-state psychiatric hospital prior to admission to [REDACTED] School.

10) The Code of Federal Guidelines § 435.1009 *Definitions relating to institutional status*, (Exhibit D-4), states in part,

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions: (a) It is attributable to – (1) Cerebral palsy or epilepsy; or (2) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires active treatment or services similar to those required for these persons.

11) The final denial letter dated August 2, 2004, (Exhibit D-5), stated in part,

The additional information has been reviewed. The discharge summary from [REDACTED] School does not reveal a diagnosis of mental retardation on Axis I, yet does reflect a serious mental illness. Active treatment such as provided in an ICF/MR facility does not appear warranted and Ms. ____ does not have a primary diagnosis of mental retardation nor a related condition.

12) Ms. ____ was admitted to the [REDACTED] School on January 16, 2002 and discharged on April 19, 2002 (Exhibit D-6). After three (3) months at the "School", [REDACTED] M.D. did not list mental retardation or any related condition in the Discharge Summary.

13) An Integrated Summary (Exhibit D-7) was completed by [REDACTED] M.A., Therapist of the [REDACTED] School, on February 4, 2002. The highlights of the "Summary" state in part:

- [REDACTED] is a 17 year old white female committed to [REDACTED] School by the [REDACTED] Judge of the Juvenile Court of [REDACTED] County pursuant to Chapter 27 of the West Virginia State Code.
- [REDACTED] was admitted to [REDACTED] School after being transferred directly from [REDACTED] Hospital. Dr. [REDACTED] completed an initial psychiatric assessment on January 17, 2002. The assessment indicated that [REDACTED] had done well up until around a year ago.
- [REDACTED] was given the Axis I diagnosis of: Schizoaffective Disorder with features of conduct disorder, oppositional defiant disorder, generalized anxiety disorder and panic disorder.
- [REDACTED] has been admitted to [REDACTED] four times, the last one most recent as two weeks and was sent directly here from there because of continued problems with auditory hallucinations telling her to hurt herself. She was at [REDACTED] for three months.
- [REDACTED] has stated that she would not want to return home after being discharged from [REDACTED] or when she turns eighteen years of age, which is in April. [REDACTED] stated that she can not take the verbal abuse by her mother and feels she needs to start taking care of herself.
- [REDACTED] last attended school in May 2001 at [REDACTED] High School. Records indicate that [REDACTED] is in the 11th grade and is in Special Education math. [REDACTED] had failed Kindergarten and sixth grade.
- She answered the question "what are your goals while at the [REDACTED] School" by stating "to get help with my issues and get along with peers."
- One of the Prioritized Recommendations for Treatment stated: Psychiatric services will continue including monitoring of mood (goal of stabilization), assessment of risk for self-harm and orders for Special Procedures (i.e. Suicide and AWOL precautions). Weekly medication reviews and adjustments as needed. According to Mrs. Workman, the Recommendations were not goals for anyone typical of Mental Retardation.

14) The DSM-IV Diagnostic Features on Mental Retardation (Exhibit D-8), states in part:

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of a various pathological process that affect the functioning of the central nervous system.

15) A Psychiatric Evaluation (Exhibit D-9) was completed by [REDACTED] M. D. of [REDACTED] Hospital on September 23, 2001. It stated in part:

The patient was admitted to the acute unit after overdosing on ten pills of her medication and drank gasoline. She had three days inpatient hospitalization. She reports that she has continued hallucinations, obsessive thinking and suicidal ideations. She was placed in the acute unit and has had significant side effects from her medications. She continues to appear somewhat bizarre, detached, and impulsive.

Treatment Plan: Recommend to admit patient to the [REDACTED] The patient will participate in routine rehabilitation therapy, art therapy, individual therapy and family therapy. Will consider stopping patient's Luvox and place the patient on Klonopin to help with anxiety and tremors... We will get a medical consult to aid with patient's tremors. The patient will be placed on Suicide and Unpredictable Precautions.

16) An Educational Evaluation (Exhibit D-10) was conducted by the [REDACTED] County Schools on October 5, 2000. ____ was 16 years 6 months at the time of the evaluation. A ____ - ____ - Revised evaluation was administered based on Age. The Table of Scores indicated:

<u>CLUSTER/Test</u>	<u>Age Equivalent</u>	<u>Standard Score</u>
Broad Math	11-9	84
Math Reasoning	10-9	83
Calculation	12-6	87
Applied Problems	10-9	83

Mrs. Workman stated that it is rare for Mental Retardation scores to be in the Low Average Range.

17) A Psychological Evaluation (Exhibit D-11) was conducted by the [REDACTED] County Board of Education on May 15, 1997. The Test Results and Interpretations state in part:

____ was given the WISC-III which is an individually administered test of intellectual abilities and skills. ____ with a chronological age of 13-1 earned a verbal IQ of 74, a Performance IQ of 66, and a Full Scale IQ of 68 on this WAIS-III administration. The 8 point difference between the development of ____'s Verbal and Performance abilities is not significant. Thus ____ is placed in the 2nd percentile and within the Deficient classification of cognitive ability when compared to the standardization sample, which was roughly representative of the population of the United States.

The Adaptive Behavior Evaluation Scales (School Version) – Revised was completed by Ms. ____, ____'s language arts teacher. The overall Adaptive Behavior Quotient of 75, places ____ within the Borderline range and at the 5th percentile when compared to her age peers. According to Mrs. Workman, this is 3 standard deviations below the mean.

One of the Recommendations offered for consideration by the Eligibility Committee (EC) included:

After careful consideration of all available data from the multidisciplinary evaluation, the E.C. should determine ____'s eligibility for special education services. ____ is currently

functioning within the mildly mentally deficient range of cognitive ability with concurrent deficits in the adaptive area of home living, community use, self-direction skills, and functional academics. The EC should also consider ____'s objective age based achievement test results contained in the educational evaluation and her educational performance within the regular classroom before a placement decision is made.

18) The Annual Medical Evaluation (DD-2A) was completed on May 26, 2004 at the _____ Hospital (Exhibit D-12). The DD-2A indicated ____'s Physical and Neurological evaluations were all normal. ____ did not require any Special Care in Mobility; Contenance Status; Feeding; Personal Hygiene or; Mental and Behavioral Difficulties. There were no additional recommendations. ____'s Mental Diagnosis was Schizoaffective Disorder and Mild Mental Retardation. The Physical Diagnosis stated Hypothyroidism and; a Poor Prognosis. The Physician certified that ____ required services provided in an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions.

19) A WV DHHR Comprehensive Evaluation (Triennial) (DD-3) was conducted on February 2, 2004 and February 9, 2004 by _____ M. A., Supervised Psychologist at _____ Hospital. (Exhibit D-13). It stated in part:

- ____ was admitted to _____ Hospital in November 2002 after being initiated on as an outpatient at _____ Hospital _____. She was sent to _____ a group home, in January 2003 for a temporary observation period away from the hospital. Records show ____ started to decompensate approximately one month after her discharge from _____. She was returned to _____ Hospital on 03/30/03 after reportedly becoming depressed and suicidal in the group home. Subsequently placement was again attempted at _____ on 06/19/03. Again, she was returned to _____ Hospital after five days due to non-compliance, aggression, and sexually inappropriate behavior. Prior to this initial admission to _____ Hospital, Ms. ____ received treatment at _____ Hospital at the age of 17 and remained there for approximately six weeks. Additionally, she was an inpatient at _____ School for Approximately four months. She has had multiple short-term hospitalizations at _____. Otherwise Ms. ____ has lived at home with her family and has never lived independently.

- The records indicate that in school Ms. ____ functioned normally academically until middle school when her performance became below average. There were consistent reports of inattention and the ability to follow directions. Beginning in high school (specifically her junior year), Ms. ____ began displaying significant symptoms of confusion, inappropriate behavior and affect.

- **Psychomotor Behaviors:** Ms. ____ has no difficulty ambulating and has full use of her extremities. There is no indication of fine or gross motor tremors and she is able to manipulate small objects easily.

- **Self-help Behaviors:** Ms. ____ can eat, toilet, dress, and clean herself physically independently, however, she currently requires prompts to initiate these behaviors and sometimes needs supervision. Ms ____ can carry out simple tasks (e.g. household tasks) with supervision. Overall, Ms. ____ is physically able to do most activities, however, needs supervision for initiation and continuation of these activities. Ms. ____ will not initiate or continue any activities of daily living independently. Her deficits also include her being at significant risk of being taken advantage of by others.

- **Language Behaviors:** Ms. ____ demonstrates some difficulties articulating her speech due to mild slurring at times, however, she can articulate meaningfully. Reportedly, Ms. ____ reads, writes and does mathematics on basic level.
- **Affective Behaviors:** Ms. ____ further shows a tendency to blame others or the medication (being incorrect) for her behavior and assumes little or no responsibility. At times, Ms. ____ can become aggressive, verbal and physical, when limits are forced.
- **Mental Behaviors:** Because Ms. ____ would not speak to the evaluator, the mental status examination was completed by personal clinical observation, as well as review of available records. While answers tend to be brief, responses are on target to the questions presented. Speech is understandable. Thought process is typically logical. There is not data to support the evidence of suicidal or homicidal thought, delusions, hallucinations, or other psychotic process. Memory functions are impaired and in line with her mild mental retardation. Judgment and insight into her illness reflect corresponding deficits.
- **Other Behaviors (Social interaction, use of time, leisure activities):** She has displayed inappropriate sexual activity due to her tendency to acquiesce to others' advances. Although numerous verbal redirections have been given Ms. ____, she persists with her inappropriate sexual behavior. She must be watched carefully, as she steals things from other patients. It seems that Ms. ____ fabricates or exaggerates stories probably for attention.

On the WAIS-III Ms ____ obtained a Verbal IQ score of 63, a Performance IQ score of 58 and, a Full Scale IQ score of 58. The Adaptive Behavior Scale-Residential and Community-2nd Edition (ABS-RC:2) was used to rate Ms. ____'s behaviors. The results were obtained by Ms. ____'s primary care person, Ms. [REDACTED]. It is based on Ms. ____'s functioning within the psychiatric hospital. Her functioning as compared to other persons with developmental disabilities/mental retardation: Independent Functioning – 10; Physical Development – 16; Economic Activity – 7; Language Development – 11; Number/Time – 15; Domestic Activity – 8; Prevocational/Vocational Activity – 7; Self-Direction – 9; Responsibility – 5; Socialization – 9. Mrs. Workman considers eligible scores below 12.

One of Ms. [REDACTED] recommendations included a structured behavior plan that would be of benefit to aid Ms. ____'s compliance with groups and individual therapy, including social skills training and assertiveness training. Under Placement Recommendations, Ms. [REDACTED] indicated that Ms. ____ "required a level of rehabilitative services in treatment of those found in an ICF/MR group home or placement of similar level of care...This level of supervision will enable Ms. ____ to learn appropriate coping behaviors and will also insure her compliance with medication.

20) A WV DHHR Comprehensive Evaluation (Triennial) (DD-3) Revision was conducted June 4, 2004 by [REDACTED] M. A., Supervised Psychologist at [REDACTED] Hospital. (Exhibit D-14). It restates the same information reported in Exhibit D-13.

21) A WVDHHR Social History (DD-4) dated October 30, 2003 (Exhibit D-15) was completed on November 5, 2003. There are no significant differences as previously stated under the Psychological Evaluations. The Reviewer expounds on Ms. ____'s Recreation/Leisure Activities i.e. Ms. ____ enjoys the same activities of most of her peers. In

addition to dancing, listening to music and, visiting with friends, she enjoys writing poetry, reading and sports (basketball, volleyball and kickball).

22) Mr. [REDACTED] Esq. submitted letters dated November 15, 2004 and July 14, 2005 respectively, with attached exhibits. The letter dated July 15, 2005 is reflected in Department Exhibit's D-7; D-11; D-12; D-14 and; D-15. The November 15, 2004 letter includes Ms. ____'s school records.

23) Mrs. Linda Workman has never interviewed Ms. _____. The only thing she knows about her was obtained through written documentation.

24) Mr. [REDACTED] reviewed the Eligibility Criteria for the Title XIX MR/DD Waiver Program with Mrs. Workman, who agreed with the following facts:

A. Ms. ____ was diagnosed with mild mental retardation before the age of twenty-two (22) years of age.

B. No documentation presented regarding a related condition.

C. The evaluations demonstrate that Ms. ____ has a diagnosis of mild mental retardation that constitutes a severe chronic disability which is: Attributable to a mental disability; Manifested before the twenty-two (22) years of age; Likely to continue and; Substantially limits functioning in the area of (1) Self-Care; (2) Capacity for Independent Living; (3) Self-Direction and; (4) Economic Self-Sufficiency (Employment).

25) Mrs. Workman testified that although Ms. ____ meets the criteria, it is used in conjunction with all relevant documentation to determine eligibility for the Title XIX MR/DD Waiver Program.

26) Ms. [REDACTED] M. A. is no longer a Supervised Psychologist working at [REDACTED] Hospital. She became a Licensed Psychologist on June 17, 2005. At the time of her evaluation of ____, she was supervised. Ms. [REDACTED] received a Bachelor's Degree in Psychology from [REDACTED] College and, a Master's Degree in Psychology from [REDACTED] University Graduate College. Ms. [REDACTED] was a Supervised Psychologist for five (5) years and has worked at [REDACTED] Hospital since 1994. Her job at [REDACTED] Hospital has always been in the field of Psychology. Ms. [REDACTED] has never been in an ICF/MR facility.

27) Ms. [REDACTED] testified that Ms. ____ had three evaluations at [REDACTED] Hospital. They were: (1) December 2, 2002 - Verbal IQ Score 71; Performance IQ Score 62 and; Full Scale Score 64 (2) February 2004 - Verbal IQ Score 53; Performance Score 58 and; Full Scale Score 58 (3) June 2004 - Verbal IQ Score 53; Performance IQ Score 58 and; Full Scale Score 58. It was Ms. [REDACTED] testimony that based upon the scores and low adaptive functioning, Ms. ____ received a diagnosis of mild mental retardation.

28) Ms. [REDACTED] defined "low adaptive functioning" as "Substantial Limitations" as stated in the Title XIX MR/DD Waiver Manual. Ms. ____ was considered significantly limited in all areas of the Subtest, when comparing her with someone with mental retardation. The exception to areas of the Subtest were Physical Development, Personal Self-Sufficiency and, Numbers and Time.

29) Ms. [REDACTED] participated in the evaluation by asking the Health Service Worker questions from an examination booklet and wrote down the answers. Ms. ____ did not provide answers for the evaluation. The responses by the Health Service Worker were observable behaviors of what Ms. ____ can and cannot do independently. The information was then scored by a computer program. According to Ms. [REDACTED] there is nothing in the test results that are believed to be either too high or too low. In addition, Ms. [REDACTED] met with Ms. ____ on more than ten (10) occasions.

30) Ms. [REDACTED] testified that the evaluation dated June 4, 2004 indicates Ms. ____ needs active treatment in the following areas:

- Able to be employed at a productive wage level without systematic long-term supervision or support – No.
- Able to learn new skills without aggressive and consistent training – No.
- Able to apply skills learned in a training situation to other environment or settings without aggressive and consistent training – No.
- Able to demonstrate behavior appropriate to the time, situation or place without direct supervision – No.
- Demonstrates severe maladaptive behavior(s) which place the person or others in jeopardy to health and safety – Yes.
- Able to make decisions requiring informed consent without extreme difficulty – No.
- Identify other skill deficits or specialized training needs which necessitates the availability of trained MR personnel, 24 hours per day, to teach the person to learn functional skills – Yes.

31) Ms. [REDACTED] was not aware of the fact that Ms. ____ was in regular education classes in the 10th grade and, in the 9th grade with the exception for Mathematics. Although the documentation shows Ms. ____ likes to write poetry, the adaptive behavior scores obtained from responses provided by Health Services Worker on the ABS-RC:2 Instrument used on June 4, 2004, indicate an Age Equivalent Score of 3 years 6 months in Language Development. (Title XIX MR/DD Home and Community Based Waiver Program Revised Operations Manual June 1, 2001 Chapter 4, Pg 34 (B) (1) Adaptive Behavior Scale).

32) Ms. [REDACTED] did not receive documentation regarding Ms. ____'s academic background in regular education for the years, 1998, 1999 and 2000. She only reviewed available documents dated May 1997 that showed she was failing all classes. The testing indicated low average range of functioning in Reading, Math and, Written Language Skills. The May 1997 assessment was completed in June, to place Ms. ____ in the proper education programs. Ms. ____ was then placed in special classes.

33) According to Ms. [REDACTED] although Ms. ____ was in regular education classes and was to receive a standard diploma, it would not necessarily raise a red flag on the ABS Scores.

34) Ms. ____'s ABS-RC:2 scores for Self-Direction state an Age Equivalent of less than a 3 year old. The Individualized Education Plan (IEP) developed in 2000, lists ____'s goals of becoming a Registered Nurse or working in the Veterinary fields.

VIII. CONCLUSIONS OF LAW:

1) Ms. ____ has a history of hospitalizations for psychiatric assessments at various mental facilities.

2) The first medical diagnosis of mental retardation appeared on the second Annual Medical Evaluation (DD-2A) completed on May 26, 2004, at the [REDACTED] Hospital. It indicated ____'s Physical and Neurological evaluations were all normal. ____ did not require any Special Care in Mobility; Continence Status; Feeding; Personal Hygiene or; Mental and Behavioral Difficulties. There were no additional recommendations. ____'s Mental Diagnosis was Schizoaffective Disorder and Mild Mental Retardation. The Physical Diagnosis stated Hypothyroidism and; a Poor Prognosis. The Physician certified that ____ required services provided in an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions.

3) The Adaptive Behavior Scales Scores on the Psychological Evaluations demonstrate Ms. ____ has a diagnosis of mild mental retardation that constitutes a severe chronic disability which is: Attributable to a mental disability; Manifested before twenty-two (22) years of age; Likely to continue and; Substantially limits functioning in the area of (1) Self-Care; (2) Capacity for Independent Living; (3) Self-Direction and; (4) Economic Self-Sufficiency (Employment). The responses on the Adaptive Behavior Scales Assessment were provided by the Health Service Worker who, observed behaviors of what Ms. ____ can and cannot do independently.

4) Mrs. Linda Workman has been a Licensed Psychologist since 1981 while, Ms. [REDACTED] became a Licensed Psychologist in June 2005. Unlike Mrs. Workman, Ms. [REDACTED] has never visited an ICF/MR Facility. In this particular matter, Mrs. Workman is the more experienced Licensed Psychologist.

5) Ms. ____ meets the general eligibility criteria but, Mrs. Workman used it in conjunction with all relevant documentation to determine eligibility for the Title XIX MR/DD Waiver Program.

6) Ms. ____ does not meet the overall eligibility for the Title XIX MR/DD Waiver Program. The Adaptive Behavior Scale Scores are in direct conflict with Ms. ____'s documented educational attainment and future goals.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the action of the Department to deny services under the Title XIX MR/DD Waiver Program

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of September, 2005.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer