



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
March 14, 2005

Joe Manchin III  
Governor

\_\_\_\_\_ for \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 24, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Medicaid, MR/DD Home and Community-Based Waiver Program.

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 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 Medicaid, MR/DD Home and Community-Based Waiver Services Program is based on current policy and regulations. Policy states that 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). (Eligibility Criteria for the MR/DD Waiver Program, Chapter 1 of the Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual).

The information which was submitted at your hearing reveals that specific criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program was not met.

It is the decision of the State Hearing Officer to **uphold** the action of the Department of Health and Human Resources to deny your application for the MR/DD Home & Community Based Waiver Services Program as set forth in the February 23, 2004 notification.

Sincerely,

Ron Anglin  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Susan Hall, Operations Coordinator, MR/DD, Office of Behavioral Health Services

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 14, 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 held January 24, 2005 on a timely appeal filed May 10, 2004. It should be noted here that services have been denied. All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled **Medicaid, Title XIX MR/DD Waiver, Home and Community Based Services**, is a federal/state funded program that provides health care coverage to low-income and medically needy West Virginians. West Virginia's MR/DD Waiver Program was implemented in March 1984 as approved by the federal Health Care Financing Administration (HCFA). The program serves individuals with mental retardation and related conditions (ICF/MR). The Waiver Program provides services in homes and local communities instead of ICF's/MR. The MR/DD Waiver Program is not an entitlement program. The program is a health care coverage program that reimburses for services to instruct/train, support and assist individuals who have mental retardation and/or related conditions to achieve the highest level of independence and self- sufficiency possible in their lives. The services provided under the MR/DD Waiver Program are: Services Coordination, Extended Physician services (Annual Medical Evaluation), Day Habilitation including QMRP (specialist) services, Prevocational Training, Supported Employment, Residential Habilitation, Transportation and Respite Care.

**III. PARTICIPANTS:** (all by phone)

\_\_\_\_\_, claimant's mother  
Susan Hall, Program Coordinator, MR/DD Waiver, Office of Behavioral Health Services  
Richard Workman, Psychological Consultant, Office of Behavioral Health Services  
Presiding at the hearing was Ron Anglin, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the claimant meets the required medical criteria necessary to establish eligibility for the MR/DD Waiver Program?

**V. APPLICABLE POLICY:**

Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Manual, Chapter1.

## VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- E-1- DD-2A, Medical Evaluation, 12/11/03
- E-2- DD-2A, Medical Evaluation, 12/11/03 revised 3/4/04
- E-3- IPP, 5/25/04
- E-4- Psy Eval 9/23/03
- E-5- IPP, 9/22/03
- E-6- Eligibility Criteria, 1-1 to 1-7
- E-7- Psy Eval, 4/20/04
- E-8- Social History, 9/25/04
- E-9- Student Accommodation Plan, 8/28/03
- E-10- Notification, 11/8/04

## VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) Hearing request received by the Board of Review May 10, 2004 based on notification of application denial dated February 23, 2004. Request received by HO July 21, 2004. A hearing scheduled for September 16, 2004. Notification of hearing mailed [REDACTED] address- from hearing request) August 30 and returned by PO September 2, 2004 marked "not deliverable". September 2 remailed notice to [REDACTED] WV address (from denial letter) and PO returned as "moved left no forwarding address". Called phone # on request and was directed to [REDACTED] WV address. Scheduling letter remailed September 9 with new date of October 8. Hearing convened October 8 and continuance granted as agency and claimant agreed that additional information would be submitted and reevaluated. December 15 informed by agency that their position was not changed by additional information. Hearing rescheduled for January 24, 2005 and convened January 26 by agreement of parties. At the conclusion of the hearing the claimant agreed to submit an additional IEP from [REDACTED] County schools. She indicated she would do this immediately. As of the date of this decision this information has not been received.
- (2) During the hearing, exhibits as noted in section VI above were submitted
- (3) Susan Hall provided information pertaining to the application process and program eligibility policy.
- (4) Richard Workman testified that an eligible person must require an institutional level of care. Notes that reports, especially from the school system fail to indicate that the child has sufficient delays to make him eligible. It appears he is not receiving an intense level of services. He is mobile and exhibits self direction. Has some delay in language but seems to understand. Cannot consider simply articulation problems. His IQ scores are inconsistent. Notes from DD-2A 12/11/03 (E-1 and 2)- some changes on last page. Notes all neurological factors are all within normal limits. Problems requiring special care are largely independent. Also there is no eligible diagnosis noted. A letter was sent and altered form (E-2) was received. The last page was the only difference- added Pervasive Developmental Disorder (PDD) and some physical factors. PDD should have reflected difficulties in several other areas. Notes from IEP [REDACTED] County child in regular classes 96% of the time. Notes from Psychological evaluation E-4 that child is fully ambulatory, self-help in line with age, language issue appears not severe at this point. Notes full scale IQ of 62- the upper limit of mild MR is 69- scores looked for are 55 or less. These type scores must be supported by adaptive behavior results and other info indicating severe adaptive delays. Evaluator states scores on part one of ABS indicates average ability in to live in the community independently. Feels he may have challenges but is not eligible at this time.
- (5) \_\_\_\_\_ testified that she provided an IEP from [REDACTED] County dated 11/15/04. She will mail this to me at the conclusion of the hearing. This report notes % of time in SpEd 99%. She must redirect him. Feels he is not up to grade level.
- (6) Exhibit E-1, Annual Medical Exam of 12/11/03 reveals claimant is ambulatory, continent and feeds himself.

He needs supervision with personal hygiene and needs close supervision in the area of mental and behavioral considerations. ICF/MR care is recommended.

- (7) Exhibit E-2, Psychological Evaluation of 9/24/03 reveals that the claimant is fully ambulatory having use of all four limbs. He can eat properly. Requires some prompting with hygiene. Good expressive language-receptive skills not as good. Enjoys riding 4 wheeler and bike, plays with cousins. Full scale IQ from Wechsler 62-indicates below average and limited intellectual ability. ABS scores in Part One Domain indicate average ability.

### VIII. CONCLUSIONS OF LAW:

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 are 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 related conditions(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)

### IX. DECISION:

Policy states that in order to be eligible for the MR/DD 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 ICF/MR facility. The evaluations must demonstrate that the mental retardation and/or related condition constitute a severe chronic disability. The severe chronic disability is attributable to a mental or physical disability or a combination of

both, has to have manifested prior to the age of 22, is likely to continue indefinitely, AND substantially limits functioning in three or more of the seven specified major life activities.

Assessing “substantial limitation” in the 7 specified areas of major life activities: Evidence offered concerning- ***Mobility, Receptive and Expressive Language, Self-Care, Learning, Self-Direction*** and ***Capacity for Independent Living*** fails to support a finding that delays are substantial or chronic/severe in nature. In short, evidence is insufficient to demonstrate that the claimant’s delays in any of these 6 categories rise to the level of qualifying or the level of care or services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded).

Evidence reveals the claimant is totally independent in ambulation/mobility. For a child his age, he is substantially independent in personal care- bathing, dressing, eating, toileting etc. His language skills, especially expressive skills, appear basic but adequate. He is enrolled in regular classroom work 97 to 99% of the time indicating learning delays are not currently a significant concern. He appears to be adequately self- directed for his age level. He enjoys social activities – riding 4 wheeler and bike. The psychological evaluation indicates average ability in the “care and responsibility that it requires to live in the community independently”. His potential for independent living in the future is reasonably anticipated based on all the skills and abilities noted in combination. The claimant’s potential for future Economic Self-Sufficiency, in terms of employment, is questionable and may constitute an area of life activity beyond the his capability.

It is the decision of the State Hearing Officer to **uphold** the action of the Department of Health and Human Resources to deny the claimant’s application for the Medicaid MR/DD Home and Community Based Waiver Services Program as set forth in the February 23, 2004 notification. I find that evidence offered failed to establish the existence or potential of substantial limitations in functioning in at least 3 of the 7 specified areas of “Major Life Activities”. I cannot find that an institutional level of care is currently appropriate.

## **X. RIGHT OF APPEAL**

See Attachment.

## **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

IG-BR-29