



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Martha Yeager Walker
Secretary

Joe Manchin III
Governor

Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org
April 14, 2005

Ms. _____

Case Name: _____

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on the hearing held November 29, 2004. Your hearing request was based on the Department of Health and Human Resources' action, to deny _____'s application for the MR/DD Waiver Services 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 and benefit levels for the Medicaid Home and Community Based MR/DD Waiver Program are determined based on current regulations. One of these regulations states in part:

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)
- (WVDHHR Title XIX MR/DD Home and Community Based Waiver Program Operations Manual, Chapter 1 Section I. C).

The information submitted at the hearing revealed: ____ does not meet the medical criteria for the MR/DD Waiver Program.

It is the decision of the State Hearing Officer, to UPHOLD the action of the Department to deny the MR/DD Waiver packet.

Sincerely,

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

cc: Erika H. Young, State Board of Review
Tiffany Fooce, Bureau for Behavioral Health and Health Facilities
Susan Hall, M.A., Bureau for Behavioral Health and Health Facilities
[REDACTED] Legal Aid of West Virginia

**WEST VIRGINIA DEPARTMENT OF HEALTH & 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 April 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 originally scheduled on August 4, 2004 on a timely appeal filed March 1, 2004. The Association for Retarded Citizens (ARC) requested to reschedule the hearing to allow additional information to be reviewed. The hearing finally convened on November 29, 2004.

It should be noted here that _____ is not receiving benefits under the MR/DD Medicaid Waiver Program.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

II. PROGRAM PURPOSE:

The program entitled the Home and Community Based MR/DD Waiver Program is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community based services. The program's target population is individuals with Mental Retardation or related conditions (ICF/MR) who would otherwise be placed in an intermediate care facility (if not for the waiver services).

III. PARTICIPANTS:

_____, Mother
_____, Advocacy Project Director – Legal of West Virginia
_____, Advocate – Legal Aid of West Virginia (Observing)
_____, Service Coordinator – _____
_____, M.A., Psychologist – _____ Psychological Services
Susan Hall, M.A., Program Operations Coordinator – Office of Behavior Health and Health Facilities (Participated by Conference Call)
Linda Workman, Psychologist – Bureau of Medical Services (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:

Does ____ meet the eligibility criteria for the MR/DD Waiver Program?

V. APPLICABLE POLICY:

WVDHHR Title XIX MR/DD Home and Community Based Waiver Program Operations Manual, Chapter 1 Section I. C. *LEVEL OF CARE CRITERIA FOR MEDICAL ELIGIBILITY.*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

- D-1 Eligibility Criteria
- D-2 Denial Letter dated 08/13/04
- D-3 Denial Letter dated 03/02/04
- D-4 Letter from [REDACTED] to OBHHF dated 04/19/04
- D-5 ABS Scores from [REDACTED] M.A., dated 05/28/04
- D-6 Psychological Assessment dated 10/21/03 – [REDACTED] M.A.
- D-7 Psychological Evaluation dated 07/31/03 – [REDACTED] M.A.
- D-8 Psychological Evaluation dated 02/26/03 – [REDACTED] Ph.D.
- D-9 DD-1 dated 5/27/03
- D-10 DD-2A dated 03/15/03
- D-11 DD-4 dated 05/20/03
- D-12 DD-5 dated 04/24/03
- D-13 DD-6 dated 05/16/03
- D-14 DD-7 dated 04/07/03
- D-15 DD-7A dated 04/07/03
- D-16 DD-6 dated 09/17/02
- D-17 Copy of Exhibits from [REDACTED] to Susan Treen (Hall)
- D-18 Scheduling Notice dated 09/28/04 – Rescheduled
- D-19 Request from [REDACTED] to reschedule dated 07/28/04
- D-20 Scheduling Notice dated 07/21/04 – Initial
- D-21 Request for Hearing dated 05/24/04
- D-22 GroupWise Messages re: Scheduling
- D-23 Letter from Ms. ____ with attached picture of ____

Claimants' Exhibits:

- C-1 Summary from Mr. [REDACTED] dated 11/30/04
- C-2 Letter from Mr. [REDACTED] dated 04/04/05 re: Decision Status

VII. FINDINGS OF FACT:

- 1) _____ applied for the MR/DD Waiver Program in June 2003. He has a related condition of Cerebral Palsy. The Bureau of Medical Services issued denial letters on January 21, 2004; March 2, 2004 and; August 13, 2004, respectively. The August 13, 2004 denial letter states in part,

The additional information does not provide an explanation or documentation from any previous assessment to support pervasive developmental disorder offered in the 10/03 psychological report. An earlier assessment that documents PDD, NOS would clarify this diagnostic issue. While he has a diagnosis of Cerebral Palsy, it has been noted that the condition is mild in degree. Also, please note that substantial delays in three major life areas are not reflected in the narrative of the psychological report. Mr. _____ does not meet the criteria of a severe/chronic disability that would require an ICF/MR institutional care.

- 2) The Application Process for the MR/DD Waiver Program focuses on three (3) primary evaluations: DD-2A Medical Evaluation; DD-3 Psychological Evaluation and; DD-4 Social History.
- 3) The Eligibility Criteria for the MR/DD Waiver Program is determined by the following information:

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)
- 4) A Psychological Evaluation was conducted by _____ Ph.D. on February 26, 2003. Dr. _____ recommends an ICF/MR Level of Care. He states in part,

The Mental Status exam revealed a white male that came to the testing session wearing glasses. _____ reported that he has to wear his glasses at all times to see and read _____ did know the day, month and year. He was also aware of

where he was and for what purpose. His dress was within normal limits as well as his hygiene.

It is clear that ____ has functional limitations in the vocational area manifested by the inability to be inconsistently employed at a self-sustaining level. ____'s medical conditions will most likely interfere with any and all social and personal interactions. ____'s impairment in interpersonal and social functioning makes it difficult for him to develop or maintain social relationships or to participate effectively in social activities...It is highly probable that ____ will never be able to sustain employment at a productive wage level without systematic long term supervision and support.

5) There were no physical or neurological abnormalities noted on the DD-2A dated April 1, 2003. It also stated that ____ did not have any problems requiring Special Care. The Diagnostic Section listed CP, MR, ADD, Anxiety, and Seizures. The physician certified a need for ICF/MR Level of Care.

6) The Social History was completed on May 20 2003. The Social Worker provided the following assessment:

Education: ____ attended Elementary School in _____ until 1997 when he moved to _____. He was placed in a class with approximately twenty (20) MI students. Ms. ____, mother, pulled ____ out of class and had teacher come to the home. ____ was home schooled by his mother from the seventh grade through the eleventh grade. At that time, ____ was sent to "Rehab" for additional training.

Functional Status: ____ worked at _____ in 2002 through the Rehab program. He is best with repetitive work such as sorting and assembly lines. Has poor hygiene, independent living and meal preparation skills. ICF/MR Level of Care recommended.

Recreation/Leisure Activities: Enjoys sports, playing Nintendo, going to movies, sorting objects, reading and television. ____ has an opportunity to participate in gross motor activities (basketball and movies while at Rehab, however is limited to television, Nintendo, sorting, etc., when at home due to a lack of social relationships and transportation.

7) A Psychological Evaluation was conducted by _____ M.A., of the Associates in Counseling and Psychology on July 31, 2003. The findings were similar to the February 26, 2003 report from Dr. _____ and, did not make a recommendation of ICF/MR Level of Care.

8) A Psychological Evaluation was conducted by _____ M.A., of Insight Psychological Counseling Services, Inc. on September 23, 2003; October 2, 2003; October 14, 2003 and; October 21, 2003. Mr. _____ stated in part,

Due to difficulty with receptive verbal and nonverbal communication skills, ____ frequently misinterprets _____ actions or comments and attributes

negative meaning to relatively benign comments and behaviors. He often claims he refrains from doing certain things out of concern for making her angry but regularly engages in activities that frustrate/anger her. Some examples include impinging on her privacy during telephone conversations, refusing to practice adequate hygiene consistently and expecting her to cater to his will and wishes.

Last year ____ initiated services at WV Rehab in Institute to develop social, occupational and independent living skills. He initially did relatively well in his class work, his work at a _____ store and his preparation for the GED. During this time he lived on the WV Rehab campus and returned home only on weekends. He reportedly maintained social relationships relatively well and participated in sports also...

Mr. _____ recommended an ICF/MR Level of Care. Mr. _____ described ____'s behavior as "peculiar."

- 9) The type of tests administered and the reported scores listed in the Psychological Evaluations, are not stated in the MR/DD Waiver Manual. The tests and scores are one of the tools used by Psychologists, to determine if an individual has substantially limited functioning in three or more of the areas of the major life activities.
- 10) Individuals scoring in the borderline range do not qualify for the MR/DD Waiver Program. It is not a program for individuals needing assistance, supervision or oversight. Individuals in an ICF/MR Level of Care require twenty four hour active treatment.

VIII. CONCLUSIONS OF LAW:

The documentation presented during the hearing indicates ____ does not have substantially limiting functioning in the areas of: Self Care; Learning; Mobility; Capacity for Independent Living; Self Direction or Economic Self-Sufficiency.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the Department's action in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29