



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

August 31, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate benefits under the Title XIX 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 Title XIX MR/DD Home and Community Based Waiver Program. is based on current policy and regulations. Some of these regulations state as follows: The individual must have a diagnosis of mental retardation and/or 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) (Chapter 1, 1A of the Title XIX MR/DD Home & Community-Based Waiver Program Operations Manual)

The information which was submitted at your hearing revealed that you do not meet the eligibility criteria for the MTDD Waiver Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate benefits.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Paralegal
Stephen Brady, BBHFF
[REDACTED]

**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 May 27, 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 convened on May 5, 2005 on a timely appeal, filed November 16, 2004. It should be noted that this hearing was originally scheduled for February 10, 2005. It was rescheduled to May 5, 2003 at the claimant's request. The record was left open until May 26, 2005 in order for closing arguments to be submitted.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

The *Medicaid Home and Community-Based MR/DD Waiver* (authorized under Title XIX, Section 1915(c) of the Social Security Act) provides an alternative to services available in Intermediate Care Facilities for individuals with Mental Retardation or related conditions (ICF/MR). The primary purpose of an ICF/MR facility is to provide health and rehabilitative services. An ICF/MR facility provides services to persons who are in need of and who are receiving active treatment.

III. PARTICIPANTS:

[REDACTED], Claimant
[REDACTED] Paralegal, Legal Aid of WV

Witnesses for the Claimant:

[REDACTED] Staff Supervisor [REDACTED]
[REDACTED] QMRP II, [REDACTED]
[REDACTED] Project Service Coordinator, [REDACTED]
[REDACTED] Psychologist (By Telephone)

Cecelia Brown, Senior Resource Specialist, BBHFF (By Telephone)
Linda Workman, Consulting Psychologist, BMS (By Telephone)

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether it has been established that the claimant continues to meet the medical eligibility criteria for the MR/DD Waiver Program

V. APPLICABLE POLICY:

Eligibility criteria for the MR/DD Waiver Program is outlined in Chapter 1 of the Title XIX cMR/DD Home and Community-Based Waiver Program Revised Operations Manual.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification Letter dated 11/08/2004
- D-2 Annual Medical Evaluation dated 03/18/2004
- D-3 Annual Psychological Evaluation dated 03/17/2004
- D-4 Monitoring Status Report

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of MRDD Waiver services.
- 2) The claimant was sent a notice dated 11/08/2004 which reads in part that waiver services are being terminated. "Documentation submitted for recertification review does not support the presence of substantial deficits in three of the seven major life

areas identified for Waiver eligibility,” (D-1) The claimant requested a hearing on this matter 11/16/2004.

- 3) The recertification packet was received in October, 2004 and had been completed in March, 2004.
- 4) The annual medical examination shows no physical or neurological problems. No problems regarding special care were noted, No additional recommendations for therapy. Under diagnosis schizophrenia (per patient). Mental limitation IQ near 60, personality disorder and morbid obesity. Continued ICF services were recommended by the physician. (D-2)
- 5) A psychological report was requested as there were no physical or neurological problems noted on the physical exam.
- 6) The psychological was completed 03/17/2004. (D-3) The report refers back to an evaluation completed in 2002 At that time, Wechsler Adult Intelligence Scale scores showed a verbal IQ of 64 and performance 63 and full scale IQ of 61. History shows the claimant is single, lives with her parents, never held a job. She is irritable, manipulates her parents, etc. Current Status – claimant has effective use of all of her limbs, she ambulates without support. Self-Help -:she feeds herself with a spoon and fork and uses a glass without spilling she is independent in toileting needs some prompting/assistance for some things such as bathing, washing and personal hygiene. Independent in dressing and undressing, She continues to be quite careful about dangers Language: She uses language to make her needs known. She asks questions, writes short memos and notes. Other: Claimant engages in leisure activities between watching television, listening to music and taking walks.
- 7) The current psychological (D-3) shows ABS scores in the superior, above average and average range. Under independent functioning which is a measure of self care, she scored a 15 (superior), physical development which relates to mobility is a score of 14 which is above average, economic activity which has to do with understanding money was a 16 (superior), language was 16 (superior), domestic activity was 16 (superior) and pre-vocational and self-direction which are 12 (average). The Part 1 factor scores show personal self-sufficiency score of 114 which is above average, community self-sufficiency was 128 which is superior. Personal/social responsibility was 117 which is above average. .
- 8) Ms. Workman testified that ABS scores are not discussed in policy. Eligibility criteria requires that an individual with a diagnosis of mental retardation require the same level of aggressive treatment, protective oversight, and supervision as that provided in an ECF/MR institutional setting. They expect that ABS scores be similar to ICF/MR individuals. For their purposes, they are looking at scores of 12 or below. She does not ever recall meeting the claimant and based her decision on information provided by others. She did note in preparing for the hearing that the ABS scores had improved since the previous psychological evaluation.
- 9) Mr. ██████ testified that the claimant does have a diagnosis of mental retardation. She has diagnoses of schizo-affective disorder and generalized anxiety. The first disorder can be disabling in its own right and it is going to complicate issues with someone

functioning in the MR level. These conditions were present before the claimant reached the age of 22. MR is lifelong and the schizo-affective disorder has a high probability of being life long. Self-Care- Client's limitations are somewhat broad. It is a relative strength for her; however, there were self-care issues of bladder control. The claimant suffers from daytime urethes. Learning – He cannot speak to her level of academic functioning but. Capacity for Independent Living – substantial limitations include inability to recognize common hazards and to recognize when she is getting into difficulty. Economic Self-Sufficiency - Difficulties with money management – is poor. Employment In her supportive work situation frequent redirection is noted, reminders attached are noted. These are behaviors that would not be tolerated outside of a sheltered work situation. The claimant would not be able to sustain employment in an independent situation without job coaches or supervising personnel. Self-Direction – The 2004 psychological report reads that she interacts with others via manipulation. She often becomes angry over minor problems. This represents a substantial limitation.

- 10) Ms. [REDACTED] in her position at [REDACTED] oversees the claimant's waiver services. She coordinates the services of individuals who provide care for the claimant. She assesses the claimant monthly and sees her when she is in their facility for supported employment. The claimant resides with her elderly parents and has no siblings. Self-Care – They have had to go in and retrain on several occasions. They have found she is not able to self-medicate. She was chewing her medication instead of swallowing. She would skip dosages as well. Capacity for Independent Living – She requires prompting to complete tasks in her home. Safety is a big issue. The claimant does not know how to respond when asked how she would evacuate in the event of a fire in her home. Self-Direction – She seeks validation from her parents – both complex and simple. Economic Self-Sufficiency – Limited on money management skills.
- 11) Ms. [REDACTED] has known the claimant since November, 2004. She and her staff provide residential habilitation such as bathing, grooming, laundry, and washing dishes. Self-Care – The claimant needs verbal prompting to take a bath, to stand under water, making sure her hair is rinsed, looking at herself in the mirror when grooming. There have been times when she puts her clothes on backwards. She is not able to follow a nutritious diet. Learning – The claimant can do addition and simple subtraction. She cannot multiply or divide. She would not be able to handle a checking account. Economic Self-Sufficiency – the claimant had a job as a volunteer. She was bitten by an animal, got extremely upset and did not return. She could not handle checks. She would let a stranger endorse her check. Economic Self-Sufficiency – the claimant has a job coach. The claimant's job is office assistant at Timberline. She is unable to perform the job without constant verbal prompts or partial physical prompts. She would not be able to perform this job or other job without constant supervision. Receptive/Expressive Language – She needs prompted by people saying hello to her. She would panic in an emergency.
- 12) Ms. [REDACTED] testified she is the RN at [REDACTED] and has worked with the claimant for about a year. She has assessed her for her ability to self-medicate. It has been a problem, She was missing a lote of doses. They have tried using a med box reminder and placing it in different locations such as by her toothbrush. They are still getting noncompliance and inability to remember them. The problem has decreased but

only because the dose has been reduced to one time per day. If her meds were changed back to four times per day she would change her recommendation for the claimant to self medicate. Self-Care – She has frequent fungal infections and she has to teach her how to bathe appropriately. The claimant cannot make appropriate decisions about medical care. Capacity for Independent Living – Food choices are poor.

13) Ms. [REDACTED] makes assessments and recommendations to the team regarding the claimant. The claimant has habilitations services in her home, social skills and supported employment. The claimant presents herself as capable but they are finding out this is not correct, Self-Care – she doesn't understand about being careful about personal hygiene, Her room was a fire hazard. That did not faze her. She did not understand certain things needed to be thrown out. Self-Direction – She cannot advocate for herself. Economic Self-Sufficiency – She is not capable of handling her money at this point. She is not capable of handling her affairs. She feels she has limitations in personal and economic safety that she is not able to make decisions. The claimant's job requires verbal prompting and partial verbal assistance. She is learning how to staple, line up papers correctly, etc. She would not be able to sustain employment without job coaches and constant supervision. She feels if support stops and her parents are no longer living, the claimant could become a victim of sexual, physical and/or financial abuse. She could be at risk to be homeless.

14) 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 in Section I within this chapter and reads 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. Tuberos 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies 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 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)
- 2) The evaluations must demonstrate that an individual has a diagnosis of mental retardation and/or a related condition, which constitutes a severe chronic disability which is attributable to a mental or physical disability or combination of both; manifested before a person reaches 22 years of age; likely to continue indefinitely, and substantially limits functioning in three or more of major life activities.
- 3) The claimant has a diagnosis of mild mental retardation. Her full scale IQ is 61.
- 4) The annual medical showed no physical or neurological problems.
- 5) The claimant does not have substantial delays in mobility, learning and language.
- 6) The claimant needs guidance for self-care, capacity for independent living and self-direction. The evidence and testimony presented does not support the need the type of care provided in an ICF/MR facility.
- 7) The claimant could not hold a job without close supervision or job coaches.
- 8) The ABS scores in the psychological report were superior, above average and average. The Department uses this as a tool to determine substantial limitations the claimant may have.
- 9) There was no sufficient evidence or testimony offered to counter the findings of the Department. The claimant's limitations do not meet the level of care needed in an ICF/MR facility.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the eligibility criteria for the MRDD Waiver Program. The Department is upheld in the proposal to terminate services. The action described in the notification letter dated November 8, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of August, 2005.

**Margaret M. Mann
State Hearing Officer**