



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
June 28, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 27, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny medical eligibility for the Title XIX MR/DD 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 and benefit levels for the MR/DD Waiver Program case are determined based on current regulations. One of these regulations is that the applicant must have both a diagnosis of mental retardation and/or a related condition and require the level of care and services provided in an ICF/MR facility (Title XIX MR/DD Home and Community-Based Waiver Program Manual October 1, 2003).

The information which was submitted at the hearing revealed that you do not meet the medical criteria for the Title XIX MR/DD Waiver Services Program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny medical eligibility for the Title XIX MR/DD Waiver Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Steve Brady, BHFF
Linda Workman, BMS
[REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,'

Claimant,

Action Number: 05-BOR-5277

v.

West Virginia Department of
Health and Human Resources

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 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 originally convened on June 27, 2005 on a timely appeal filed March 21, 2005.

It should be noted here that any benefits under the Title XIX MR/DD Waiver Program have been denied pending the results of this hearing. It should also be noted that the hearing was held by telephone conference at claimant's request.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Title XIX 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.

The MR/DD Waiver Program serves individuals who are eligible to receive services in an Intermediate Care Facility for Individuals with Mental Retardation and Related Conditions (ICF/MR). The MR/DD Waiver Program provides services in homes and local communities instead of ICFs/MR.

III. PARTICIPANTS

1. _____, Claimant's mother.
2. _____
3. Steve Brady, Program Manager, BHHF
4. Linda Workman, Psychologist Consultant, BMS.

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

V. QUESTION TO BE DECIDED

The question to be decided is whether the claimant (_____) meets the medical eligibility requirements for the Title XIX MR/DD Waiver Program.

V. APPLICABLE POLICY

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Title XIX MR/DD Home and Community-Based Waiver Program Manual, Chapter 500-Covered Services, Limitations, and Exclusions, For MR/DD Waiver Services, October 1, 2003.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits

- Exhibit #1 Copy of MRDD Waiver Manual October 1, 2003 (10 pages).
" #2 Copy of denial notice dated 2-23-05.
" #3 Copy of Packet cover sheet.
" #4 Copy of letter from [REDACTED] 1-18-05.
" #5 Copy of Participant Monitoring Status Report and Needs Summary (2 pages).
Exhibit #6 Copy of Annual Medical Evaluation (4 pages).
" #7 Copy of Psychological Evaluation (6 pages).
" #8 Copy of Initial Social History (6 pages).
" #9 Copy of Individual Program Plan (11 pages).
" #10 Copy of IEP Team Meeting (2 pages).
" #11 Copy of Individualized Education Program (21 pages).
" #12 Copy of Cost Estimate Worksheet (2 pages).
" #13 Copy of Informed Consent (2 pages).

VII. FINDINGS OF FACT

1. The claimant's packet was denied for medical eligibility under the Title XIX MR/DD Waiver Services Program with notification sent on 2-23-05 (Exhibit #2).

2. Testimony from Mr. Brady indicated that in order to meet medical eligibility for the Title XIX MR/DD Waiver Services Program, the packet submitted for the individual must show that he has been diagnosed with Mental Retardation (MR) or a related condition which manifested itself prior to age 22, that he requires ICF/MR level of care, and that he has substantial deficits in at least three (3) major life areas including self-care, learning, mobility, capacity for independent living, expressive and/or receptive language, self-direction, and economic self-sufficiency.

3. Ms. Workman testified the packet showed that the claimant did not meet the medical eligibility criteria, that there must be a diagnosis and substantial deficits in three (3) of the major life areas, that the claimant was given an eligible diagnosis of Pervasive Developmental Disorder NOS, that the annual medical evaluation showed no deficits in mobility or self-care, that the Psychological Evaluation showed no mobility problems, that he has occasional toileting accidents, that he is sometimes aloof and withdrawn, that he had a full-scale IQ of 66 which is in the mild MR range, that he had a verbal IQ of 67 which is in the mild MR range, and that he had a performance IQ of 73 which is in the borderline MR range, that the MRDD Program is looking for persons with moderate MR, that the ABS scores were compared to non-MR norms and the MRDD Program is looking for scores of 1 or less, that the claimant's scores were all above 1, that the claimant's scores did not meet the criteria for the MRDD Program, that the social history showed some social delays which had improved over the past year, that the IEP showed that the Peabody Picture Vocabulary test score was 76 and they are looking for an eligible score of 55, that the claimant did not meet the criteria for self-care as he had a standard score of 9 on the ABS, that he had a score of 14 in physical development and did not have a deficit in mobility, that language was delayed but the score of 5 was not an eligible score, that learning was not assessed but the IEP showed no substantial deficit in learning, that the self-direction score of 5 was not an eligible score, and that capacity for independent living and economic self-sufficiency are not applicable areas for a person of the claimant's age but that the self-sufficiency age equivalency of 8 years and 3 months and the pre-vocational score would show that the claimant does not have eligible scores, that the claimant did not meet the criteria for a substantial deficits in three (3) or more areas and did not meet the medical criteria for ICF/MR level of care

4. Ms. _____ testified that a new IEP had been completed and offered it to Ms. Workman to review but the State Hearing Officer informed her that the hearing involved the packet already reviewed which resulted in the denial letter dated 2-

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23-05 and a new IEP would not be relevant to this hearing. Ms. _____ offered no other testimony and Ms. [REDACTED] also offered no testimony.

5. Medical eligibility for the Title XIX MR/DD Waiver Services Program is determined based on an evaluation of the testimony and admissible evidence provided during the hearing (Exhibits #1 through #13). The State Hearing Officer finds that the claimant has an eligible diagnosis which manifested prior to age 22 and is expected to continue indefinitely, but that the documentation does not show that the claimant requires ICF/MR level of care. The documentation does not show that the claimant has substantial limitations in the daily living areas of self-care, receptive or expressive language,

learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

CONCLUSIONS OF LAW

1. Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 500, October 1, 2003 states, in part:

"Medical Eligibility Criteria

BMS and OBHS determine the medical eligibility for an applicant in the MR/DD Waiver Program. In order to be eligible and to receive MR/DD Waiver Program Services, an applicant must meet the following medical eligibility criteria:

- * Have a diagnosis of mental retardation and/or a related condition
- * Require the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded) as evidenced by required evaluations and corroborated by narrative descriptions of functioning and reported history. An ICF/MR provides services in an institutional setting for persons with mental retardation or related condition. An ICF/MR facility provides 24 hour supervision, training, and supports.

OBHS and BMS determine the level of care based on the Annual Medical Evaluation (DD-2A), Psychological Evaluation (DD-3), and Social History (DD-4) Evaluation, and other documents as requested.

The evaluations must demonstrate that the applicant has a diagnosis of mental retardation which must be severe and chronic, and/or a related developmental condition, which constitutes a severe and chronic disability. For this program, individuals must meet the diagnostic criteria for medical eligibility.

Medical Eligibility Criteria: Diagnosis

Diagnosis

- * **Must have a diagnosis of mental retardation, which must be severe and chronic, in conjunction with substantial deficits (substantial limitations associated with the presence of mental retardation), and/or**
- * **Must have a related developmental condition, which constitutes a severe and chronic disability with concurrent substantial deficits.**
- **Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the MR/DD Waiver Program include, but are not limited to, the following:**
 - * Any 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.

* Autism

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* Traumatic brain injury

* Cerebral Palsy

* Spina Bifida

* Tubercous Sclerosis

Additionally, mental retardation and/or related condition with associated concurrent adaptive deficits:

- * were manifested prior to the age of 22, and
- * are likely to continue indefinitely

Functionality

* Substantially limited functioning in three or more of the following major life areas: (Substantial limits is defined on standardized measures of adaptive behavior scores three (3) standard deviations below the mean or less than 1 percentile when derived from non MR normative populations or in the average range or equal to or below the seventy fifth (75) percentile when derived from MR normative populations. The presence of substantial deficits must be supported by the documentation submitted for review, i.e., the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)

- Self-Care
- Receptive or expressive language (communication)
- Learning (functional academics)
- Mobility
- Self-direction
- Capacity for independent living (home living, social skills, employment, health and safety, community use, leisure)

Active Treatment

* Requires and would benefit from continuous active treatment

Medical Eligibility Criteria: Level of Care

* To qualify for ICF/MR level of care, evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills and increase independence in activities of daily living
- A need for the same level of care and services that is provided in an ICF/MR institutional setting

The applicant, his/her family, and/or legal representative must be informed of the right to choose between ICF/MR services and home and community-based services under the MR/DD Waiver Program, and informed of his/her right to a fair hearing (Informed Consent, DD-7).

2. 42 CFR 435.1009 states, in part:

"Active Treatment in intermediate care facilities for the mentally retarded means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under 483.440(a) of this subchapter.....

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Institution for the mentally retarded or persons with related conditions means an institution (or distinct part of an institution) that--

(a) Is primarily for the diagnosis, treatment, or rehabilitation of the mentally retarded or persons with related conditions; and

(b) Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his greatest ability.....

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 of adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (1) Self-care.
- (2) Understanding and use of language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living."

3. 42 CFR 483.440(a) states, in part:

"(a) Standard: Active treatment. (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward--

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program."

VIII. DECISION

Based upon the evidence and testimony presented, I must uphold the action of the Department to determine that the claimant does not meet the medical eligibility criteria for the MR/DD Waiver Services Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

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The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

