



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
November 21, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

_____ for _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your child's services under the 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 and benefit levels for the MR/DD Home and Community-Based Waiver Program are determined based on current regulations. One of these regulations 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 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). (West Virginia Title XIX MR/DD Waiver Home & Community-Based Policy Manual, Chapter 1, Section I)

The information which was submitted at the hearing revealed that your child's current diagnosis is a related condition and thus qualifying. However, evidence provided failed to demonstrate substantial limitations in 3 of the specified 7 categories, indicating that your child does not currently require the level of care provided in an ICF/MR facility.

It is the decision of the State Hearing Officer to **uphold** the Department's determination to terminate benefits and services under the MR/DD Home and Community-Based Waiver Program. Evidence did not establish that medical eligibility criteria was met.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Stephen Brady, Office of Behavioral Health Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

v. **Action Number** _____

West Virginia Department of Health & Human Resources,
Respondent.

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 November 16, 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 scheduled for September 27, 2005 and rescheduled at the agency's request. The hearing was rescheduled and held September 19, 2005 on a timely appeal filed May 27, 2005. It should be noted here that services have continued pending a hearing decision. All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

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

The Medicaid Home and Community-Based MR/DD Waiver (authorized under Title XIX, Section 1915 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). West Virginia's MR/DD Waiver Program provides for individuals who require an ICF/MR level of care, and who are otherwise eligible for participation in the program, to receive certain services in a home and/or community-based setting for the purpose of attaining independence, personal growth, and community inclusion.

III. PARTICIPANTS

_____, mother to claimant

_____, father to claimant

Stephen Brady, MR/DD Waiver Program, Office of Behavior Health Services (by phone)

Linda Workman, Psychologist Consultant, Bureau for Medical Services (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether the agency was correct in their determination that the claimant does not meet the medical eligibility criteria for continued participation in the MR/DD Home and Community-Based Waiver Program?

V. APPLICABLE POLICY

Title XIX MR/DD HCB Waiver Program Operations Manual, Ch 1, Sec I

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department Exhibits:

E-1- Notification, 5/11/05

E-2- WVDHHR MR/DD Policy Manual 500- 509.1

E-3- Annual Medical Evaluation, 5/21/05

E-4- Psychological Evaluation, 8/9/04

E-5- IEP, _____ 5/4/04

Claimant Exhibits:

C-1- Psychological Evaluation, 8/3/05

C-2- IEP, _____ 9/15/05

VII. FINDING OF FACTS:

- 1) On May 11, 2005, a Notice of termination (E-1) was sent to the claimant as a result of a recertification review. The basis of decision indicated that documentation "does not support the presence of substantial adaptive deficits in 3 or more of the 7 major life areas identified for Waiver eligibility".
- 2) A hearing was requested by the claimant May 23, 2005 and this request was received by the Board of Review May 27, 2005
- 3) This request was received by the examiner June 9, 2005 and a hearing was scheduled for September 27, 2005. At the request of the agency, the hearing was rescheduled and held September 19, 2005.

- 4) Exhibits as listed in section VI above were accepted. Exhibits C-1 and 2 presented by the claimant at the hearing were faxed to the agency post-hearing. An E-Mail from the agency was received 9/21/05 indicating no change in the agency's determination based on the additional documentation.
- 5) Testimony was heard from the individuals listed in section III above.
- 6) The agency acknowledged an eligible diagnosis- Pervasive Developmental Disorder.
- 7) The agency's psychologist reviewed the medical/social information. It was noted that concerning ABS scores, when non-MR norms are used the agency is looking for scores below 1 percentile and IQ's below 55. It was noted that all ABS testing utilized non-MR norms while there has been no MR diagnosis. The agency's position is that claimant fails to meet program criteria in self- care, learning, mobility, language, self- direction, capacity for independent living or economic self- sufficiency.
- 8) Testimony offered on behalf the claimant reveals that the claimant has been on the program since 2000 and on birth to 3 program prior to that. It was acknowledged that the claimant has made some progress.
- 9) Exhibit E-3, the Annual Medical Evaluation of 5/21/04 reveals problem areas requiring special care in continence and self-care. The diagnosis set forth is Autism.
- 10) Exhibit E-4, the Psychological evaluation of 8/9/04 provides diagnoses of AD/HD NOS and Pervasive Developmental Disorder NOS. No physical deficits are noted. Independent in self help issues. Language- good comprehension, expresses self, responds appropriately. Exhibits a normal range of emotions. Enjoys reading, playing with toys and TV. IQ 109- average range. ABS scores (MR norms) are average or above in all but Economic Activity. Prognosis indicates that claimant's independent functioning is good. Continued XIX waiver is recommended.
- 11) Exhibit E-5, IEP of 5/4/05 indicates that the claimant is in regular education 82% of the time and in special education 18%.
- 12) Exhibit C-1, the Psychological Evaluation of 8/3/05 provides diagnoses of Autistic Disorder, AD/HD, Combined (by history). No sensory or physical deficits are documented. Largely independent in self -care with some toileting accidents at night. Language is age appropriate. Interacts with his sister, likes games. FSIQ 74- borderline. The evaluator opines that overall intellectual functioning is difficult to summarize by a single score based on the claimant's unique set of thinking and reasoning abilities. Verbal reasoning skills are in the borderline range while nonverbal are average. ABS scores (MR norms) are largely average or above with the exception of economic activity. ICF/MR level of care is recommended
- 13) Exhibit E-2, IEP of 9/15/05 indicates that the claimant is in regular education 42% and special education 58%.

- 14) The claimant's representatives were granted a 2 week period to submit additional medical information. As of the date of this decision no further documentation has been made available to the examiner.
- 15) Eligibility Criteria for the MR/DD Waiver Program are outlined in Chapter 500 of the Title XIX MR/DD Home and Community-Based Waiver Program.
 - Must have a diagnosis of mental retardation, which must be severe and/or 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, chronic disability with concurrent substantial deficits.
 - Substantially limited functioning in three or more of the following major life areas: self-care, receptive or expressive language, learning, and mobility, and self-direction, capacity for independent living or economic self-sufficiency.
 - 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 daily living. A need for the same level of care and services that is provided in an ICF/MR institutional setting.

VIII. CONCLUSIONS OF LAW:

1. To qualify for the MR/DD program an individual must have a diagnosis of mental retardation or must have a "related developmental condition", which constitutes a severe, chronic disability with concurrent substantial deficits. The agency concedes an eligible diagnosis- Pervasive Developmental Disorder.
- 2) An eligible individual must possess substantially limited functioning in three or more of the designated major life areas.
- 3) Mobility - evidence reveals no physical impairment.
- 4) Self-Care- evidence reveals independence with the exception of occasional night toileting. No substantial deficit was apparent.
- 5) Receptive/Expressive Language- from the evaluations submitted both areas are adequate and age appropriate.
- 6) Learning (functional academics) - Full scale IQ scores range from 109 to 74, both of which exceed the 55 threshold. The claimant is at the appropriate grade level. Nonverbal reasoning skills are in the normal range.
- 7) Self-Direction – ABS scores are in the average range. The claimant interacts with others. He enjoys reading and games and watching TV, suggesting age appropriate behavior.
- 8) Capacity for Independent Living - ABS scores in Personal and Community Self-sufficiency and Personal/Social Responsibility and Independent Functioning are all in the average range. When combined with his language, self care and mobility skills his potential capacity to live independently is credible.

- 9) Economic Self-Sufficiency – The claimant is 11 years old therefore the ability to achieve economic self - sufficiency entails a reasonable prediction of the individual's future functional and intellectual progress and development. While ABS scores in this area are below average, the claimant currently has no physical difficulties, has a good grasp of language, has a reasonable chance of fully developing a capacity to live independently and possess the potential intellectual ability to learn basic work skills. His ability to become self-sufficient is realistic based on documentation presented.

IX. DECISION:

After a thorough examination of all evidence presented, it is the decision of the State Hearing Examiner to uphold the Department's proposal in termination of the claimant's medical benefits and related services under the MR/DD Waiver Program as set forth in the May 11, 2005 notification.

While it is clear that the claimant has some obvious challenges, evidence provided fails to support a finding that the claimant requires that level-of-care routinely provided in an ICF/MR facility.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29

ENTERED This 21st Day of November 2005,

RON ANGLIN
State Hearing Examiner