



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

PO Box 29

Grafton WV 26354

October 26, 2006

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 October 6, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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. (MR/DD Waiver Manual § 503.1

The information which was submitted at the hearing revealed that your current diagnosis is a related condition and thus qualifying. However, evidence provided failed to demonstrate substantial functional limitations in three or more of the designated major life areas, indicating that the level of care provided in an ICF/MR facility is not currently required.

It is the decision of the State Hearing Officer to **uphold** the Department's determination to terminate benefits and services under the MR/DD Waiver Program as set forth in the May 19, 2006 notification.

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 06- BOR-2032

**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 examiner resulting from a fair hearing concluded on October 26, 2006 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 October 6, 2006 on a timely appeal filed June 1, 2006. It should be noted here that services have continued pending a hearing decision.

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:

_____, claimant
_____, aunt to claimant and POA
_____, CM, [REDACTED]

Susan Hall, Program Manager, MR/DD Program, Office of Behavior Health Services (by phone)
Richard 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:

MR/DD Waiver Manual § 503.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits:

- E-1- MR/DD Waiver Manual Policy 503.1
- E-2- Notification, 5/19/06
- E-3- Annual Medical Evaluation, 4/17/06
- E-4- Psychological evaluation, 11/29/05

Claimant Exhibits:

- C-1- Psychological evaluation, 9/6/06

VII. FINDING OF FACTS:

- 1) On May 19, 2006, a Notice of Termination (E-2) was sent to the claimant as a result of a recertification review. The basis of decision indicated that documentation submitted “does not support substantial delays in three of the six major life areas identified for eligibility for Title XIX MR/DD Waiver. Additionally, Mr. _____ does not require the active treatment typically provided in an ICF/MR institutional setting and no longer requires an ICF/MR level of care and support typically provided in an ICF/MR

institutional setting.”

- 2) A hearing was requested by the claimant June 1, 2006 and this request was received by the Board of Review June 2, 2006.
- 3) This request was received by this examiner June 9, 2006 and a hearing was scheduled for and held October 6, 2006.
- 4) Exhibits as listed in section VI above were accepted. Exhibit C-1 presented on behalf of the claimant was faxed to the agency 10/2/06.
- 5) Testimony was heard from the individuals listed in section III above. All persons giving testimony were placed under oath.
- 6) The agency acknowledged that the claimant has an eligible diagnosis- Mild MR and Cerebral Palsy.
- 7) The agency’s psychologist reviewed the medical/social information. Noted that the medical evaluation (E-3) indicates areas of concern are ambulation- w/human help and personal hygiene- needs assistance. The Psychological evaluation (E-4) indicates that a cane is used to ambulate and he communicates well with an age appropriate vocabulary. Self-help - independent in toileting, bathing and eating. Uses comprehensive sentences in expressing self and has good comprehensive skills. Has self- direction as he enjoys keyboarding, computer games, TV and internet. These factors indicate a lack of need for active treatment or institutional care. ABS scores for eligible persons are usually in the less than 75 percentile range. Scores here in independent functioning, language, self-direction all exceed this threshold. ABS scores are average, above average or superior. Domains - reveals positives in independent functioning, physical development, language, numbers and time, domestic activity and self-direction- none reach an LCF/MR level of care. Need for 24 hour supervision not supported. Nothing was found in Exhibit C-1 to alter the agency’s decision.
- 8) Testimony offered by the case manager reveals that the claimant answers questions to place himself in a good light rather than realistic. Doesn’t believe claimant can climb steps without help. Has poor balance.
- 9) The claimant’s aunt testified that the claimant cannot climb steps alone. He has fallen many times. He lives with her. There is a respite worker in the home about 4 to 6 hours per day as she works. She prepares meals which he can heat in a microwave. Denies that he can fix meals. Feels his reading level is about 5th grade. Is going to put him in a literacy group. He is a very positive person and tries very hard. Is an SSI recipient and has been on the program about 5 years. He is able to ambulate about the home when alone.

- 10) Exhibit E-3, Annual Medical Evaluations of 4/17/06 reveals “problem areas requiring special care” to be Mobility- w/human help and Personal hygiene- needs assistance. The diagnoses set forth are mild anxiety and CP and the prognosis good.
- 11) Eligibility Criteria for the MR/DD Waiver Program are outlined in the MR/DD Waiver Manual Policy § 503.1
 - 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** (functional academics), **mobility**, **self-direction**, and **capacity for independent living**.
 - 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 eligible diagnoses- Mild MR and Cerebral Palsy.
- 2) An eligible individual must possess substantially limited functioning in **three** or more of the following designated major life areas.
- 3) Mobility - evidence reveals that the claimant is able to ambulate with the help of a footed cane but has difficulty with stairs and requires assistance at such times. His balance is poor and he falls on occasion. These limitations in combination with his CP suggest a qualifying deficit in this category.
- 4) Self-Care- evidence reveals independence with toileting bathing and eating. No substantial deficit was apparent.
- 5) Receptive/Expressive Language- Language is characterized as clear and coherent with comprehension age appropriate. No substantial deficit found
- 6) Learning (functional academics) – Documentation reveals that the claimant has writing and reading skills. ABS scores reveal well above average scores in adaptive behavior

categories. No substantial qualifying deficit found.

- 7) Self-Direction – The claimant enjoys keyboarding, computer games, TV and internet. ABS scores in self-direction are in the superior range. No substantial qualifying deficit found.
- 8) Capacity for Independent Living - ABS scores in Personal and Community Self-sufficiency and Personal/Social Responsibility and Independent Functioning are in the above average or superior range. Documentation suggests that several factors adversely impact the claimant's capacity for independent living- mobility limitations, (while minimal) assistance and/or prompting with personal care issues, employment limitations. Deficit found.

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 19, 2006 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. Only 2 substantially limiting qualifying deficit was found based on the evidence presented - Capacity for Independent Living and mobility.

IX. RIGHT OF APPEAL:

See Attachment.

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

IG-BR-29

ENTERED This 26th Day of October, 2006,

RON ANGLIN
State Hearing Examiner