



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Office of Inspector General

Board of Review

PO Box 29

Grafton WV 26354

December 11, 2006

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 12, 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 June 5, 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  
[REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

\_\_\_\_\_  
Claimant,

v.

Action Number 06- BOR-2230

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 December 11, 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 12, 2006 on a timely appeal filed June 26, 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  
\_\_\_\_\_, mother to claimant  
\_\_\_\_\_, father to claimant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Susan Hall, Program Manager, MR/DD 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:**

MR/DD Waiver Manual § 503.1

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

Department Exhibits:

- E-1- Annual Medical Evaluation, DD-2A, 11/10/05
- E-2- Psychological evaluation, 1/12/05
- E-3- Social History update, 11/25/05
- E-4- MR/DD Waiver Manual Policy 503.1
- E-5- Notification, 6/5/06
- E-6- Memo \_\_\_\_\_ current Social History request, 5/2/06

Claimant Exhibits:

- C-1- Psychological evaluation, 6/7/06
- C-2- Letter, \_\_\_\_\_ D.O. to \_\_\_\_\_ 10/9/06
- C-3- Letter, \_\_\_\_\_ PH.D. Licensed Psychologist to \_\_\_\_\_ 7/24/06

## VII. FINDING OF FACTS:

- 1) On June 5, 2006, a Notice of Termination (E-5) was sent to the claimant as a result of a recertification review. The basis of decision indicated that documentation submitted “does not support the presence (of) substantial adaptive deficits or the need for 24- hour supervision and support such as that provided in an institutional level of care.”
- 2) A hearing was requested by the claimant June 26, 2006 and this request was received by the Board of Review June 30, 2006.
- 3) This request was received by this examiner July 5, 2006 and a hearing was scheduled for and held October 12, 2006.
- 4) Exhibits as listed in section VI above were accepted. Exhibits C-1 thru 3 were presented on behalf of the claimant and faxed to the agency during the hearing.
- 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.
- 7) The agency’s psychologist reviewed the medical/social information. Noted that the medical evaluation of 11/10/05 (E-1) indicates an eligible diagnosis and recommends an ICF/MR level of care. The Psychological evaluation (E-2) indicates that the claimant lives in a trailer behind her parents. Under “current behaviors” it is noted that she is ambulatory and can take care of most of her self-help needs with some prompting. She is able to communicate normally and answers accurately. Is active – bowling, horseback riding, Special Olympics, crosswords. Under skill acquisition regarding active treatment is able to meet personal care needs, understand simple commands, communicates basic needs and is able to make informed decisions. Employment potential is not positive. These factors do not indicate the need for active treatment. She requires prompting supervision and support rather than aggressive active treatment to accomplish household tasks which she appears to know how to do. A social history was requested as ABS scores appear inconsistent with narrative. Eligible scores would usually be 12 or below. The social history (E-3) notes claimant is involved in a number of social activities. Notes that claimant stays alone at night. Receives 5 day per week services. Dilemma for agency is that claimant doesn’t require 24 hour per day supervision and she doesn’t receive active treatment. Concerning the 6 major life areas: Ambulation- She is fully mobile with full use of limbs. Language- has full use of. Independent functioning- has skills to function independently, personal care etc. with prompting and support. Learning was not assessed. Self-direction- involved in a number and variety of activities. Capacity for Independent Living- unsupervised at night, meets personal needs and has social skills.

- 8) Testimony reveals that the claimant has been on the program since about 1998 and receives SSI benefits.
- 9) Testimony offered by the claimant's family reveals that the claimant requires prompting in completing personal care. Employment hasn't worked out in the past and the claimant is currently doing volunteer work at a nursing facility. They must call in the morning to wake her up and tell her when to go to bed. She seems to have little concept of time. Cannot be left alone- goes with them when HM not there. Doesn't always seem to understand instructions but can follow simple instructions and commands. Math skills of a 1<sup>st</sup> grade level. Writing consists of printing. No mobility issues. Capacity to live independently doubtful as she needs constant monitoring.
- 10) The claimant's homemaker testified that the claimant has left the gas on the stove when not lit. Cannot transport herself. Sometimes dresses improperly for weather conditions. Ability to handle money and FS card is limited. Can prepare simple meals with supervision.
- 11) Exhibit E-1, Annual Medical Evaluations of 11/10/05 reveals under "Problem areas requiring special care" that the claimant is ambulatory, continent, able to feed self, independent in self-care, and alert. The diagnoses set forth are mild MR and Dependant Personality. The claimant's prognosis is "good". An ICF/MR level of care is recommended.
- 12) Exhibits E-2 and C-1 consist of psychological evaluations of 7/12/05 and 6/7/06. Both reports find the claimant- ambulatory with normal gait and posture; able to take care of most self care needs with prompting and support; speech at normal rate, pressure and tone, basic vocabulary and spontaneous conversation; involved in a number of activities- horseback riding, crafts, latch hook, crosswords and computer. C-1 reveals a FSIQ of 54. Issues pertaining to "active treatment" reveal concerns in employment, new skill acquisition and behavior as to health and safety of others. ABS scores are characterized as average for MR population. Raw scores are average or above with the exception of social and personal adjustment and self- abusive and interpersonal behavior.
- 13) Eligibility Criteria for the MR/DD Waiver Program from the MR/DD Waiver Manual Policy § 503.1 state in part:
  - 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 an eligible diagnosis exists.
- 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 normal gait and posture. No substantial deficit is documented in this category.
- 4) Self-Care- evidence reveals the claimant is able to perform most self care needs with occasional prompting and supervision. No substantial deficit is documented in this category.
- 5) Receptive/Expressive Language- Speech is essentially normal. Claimant has a basic vocabulary and is conversational. She is able to understand simple instructions. No substantial deficit is found in this category.
- 6) Learning (functional academics) – Documentation reveals that the claimant has limited writing and reading skills. FSIQ is 54. The agency provided no opinion in this category. On the basis of the claimant’s MR, lack of reading and writing skills, and need for constant prompting, reminders and monitoring, assignment of a qualifying deficit in this category is supported.
- 7) Self-Direction – The claimant is involved in a number of activities- horseback riding, crafts, latch hook, crosswords and personal computer. ABS scores in self-direction are in the average range as are most other scores. No substantial qualifying deficit is found in this category.
- 8) Capacity for Independent Living - ABS scores in Personal and Community Self-sufficiency and Personal/Social Responsibility and Independent Functioning are in the average range. Documentation suggests that several factors adversely impact the claimant’s capacity for independent living- safety issues, need for continuous prompting and supervision with personal care issues, financial management and employment limitations. A qualifying deficit is found in this category.

**IX. DECISION:**

After a thorough examination of all the evidence presented, it is the decision of the State Hearing Examiner to **uphold** the Department's proposal to terminate of the claimant's medical benefits and related services under the MR/DD Waiver Program as set forth in the June 5, 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 deficits were found based on the evidence presented - Capacity for Independent Living and Learning. Significant deficit must be found in 3 of the 6 major life areas set forth in policy to establish continuing medical eligibility for the MR/DD program.

**IX. RIGHT OF APPEAL:**

See Attachment.

**X. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

IG-BR-29

**ENTERED This 11<sup>th</sup> Day of December, 2006,**

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**RON ANGLIN**  
**State Hearing Examiner**