



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

Earl Ray Tomblin
Governor

June 11, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your son's hearing held June 6, 2012. The hearing request was based on the Department of Health and Human Resources' decision to deny his application for benefits and services associated with the Medicaid I/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 for the I/DD Waiver Program is based on current policy and regulations. Policy states that in order to be eligible for the Title XIX I/DD Home & Community-Based Waiver Program, an individual must substantiate each of the following elements: 1) a diagnosis of mental retardation with concurrent substantial deficits which require the level of care and services provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR); 2) substantially limited functioning in three or more of the major life areas of self-care, receptive or expressive language, learning, mobility, self-direction, and capacity for independent living; 3) the requirement for and ability to derive benefit from continuous active treatment; and 4) the endorsement of the need for an ICF/MR level of care from both a physician and a psychologist. (I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.3.1).

Clinical information provided during the hearing revealed that your son does not meet the medical eligibility criteria required for participation in the Medicaid I/DD Waiver program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your son's application for benefits and services associated with the I/DD Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
Jennifer Eva-APS Healthcare

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1126

**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 for ----- which convened on June 6, 2012, on a timely appeal, filed April 4, 2012. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual.

II. PROGRAM PURPOSE:

The Intellectual and Developmental Disabilities (I/DD) Waiver Program is West Virginia's home and community-based services program for individuals with intellectual and/or developmental disabilities. It is administered by the Bureau for Medical Services pursuant to a Medicaid waiver option approved by the Centers for Medicare and Medicaid (CMS). The I/DD Waiver Program reimburses for services to instruct, train, support, supervise, and assist individuals who have intellectual and/or developmental disabilities in achieving the highest level of independence and self-sufficiency as possible. The I/DD Waiver Program provides services in natural settings, homes and communities where the individual resides, works and shops.

III. PARTICIPANTS:

- , Claimant
- , Claimant's mother
- , Claimant's father

Jennifer Eva, Lead Service Support Facilitator-APS Healthcare
Richard "Rick" Workman, Psychologist Consultant-Bureau for Medical Services (BMS)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny the Claimant's application for benefits and services associated with the Medicaid I/DD Waiver program.

V. APPLICABLE POLICY:

West Virginia Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program
- D-2 Notice of Decision dated March 12, 2012
- D-3 Independent Psychological Evaluation IPE dated February 22, 2012

Claimant's Exhibits:

- C-1a Letter from ----- dated May 22, 2012
- C-1b Letter from ----- dated May 23, 2012
- C-1c Letter from ----- dated May 22, 2012
- C-1d Letter from -----, Assistant Principal -----, dated May 25, 2012
- C-1e Letter from -----, IEP Coordinator, dated May 30, 2012

VII. FINDINGS OF FACT:

- 1) On March 12, 2012, the Department issued the Claimant a Notice of Denial (Exhibit D-2) in response to his application for benefits and services associated with the Medicaid I/DD Waiver Services program. This notice lists the reasons for denial of the application as:

Your Waiver Application is hereby denied.

Your application was denied/terminated because documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility.

Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas-self-care, receptive or expressive language, mobility, self-direction and capacity for independent living.

- 2) There are four components to establishing medical eligibility for the I/DD Waiver program. These areas include: diagnostic, functionality, level of care and the need for active treatment. Richard Workman, Psychologist Consultant for the Bureau of Medical Services (BMS) reviewed the Independent Psychological Evaluation (IPE) (Exhibit D-3) completed on February 22, 2012, and contends that substantial delays concerning the Claimant's functionality were not identified on administered assessments, or supported by narrative documentation in three or more of six major life areas associated with I/DD Waiver eligibility.

As part of the IPE, the Claimant's mother completed the Adaptive Behavior Assessment System (ABAS) on behalf of the Claimant as a measure of her son's adaptive behavior. Mr. Workman indicated that standard scores of one or two on the administered test are considered eligible scores for medical eligibility purposes. The Claimant achieved the following scores in the six major life areas of functionality:

Receptive or Expressive Language (Communication)-the Claimant achieved a score of 7, which is not considered an eligible score.

Learning (Functional Academics)-the Claimant achieved a score of 1, which is an eligible score and the Claimant was awarded a deficit in this life area.

Self-Care-the Claimant achieved a score of 4, which is not considered an eligible score.

Self-Direction-the Claimant achieved a score of 4, which is not considered an eligible score.

Capacity for Independent Living-the Claimant achieved a score of 2 in the area of community use which is considered an eligible score; however, in the remaining subcomponents under the domain, the Claimant achieved scores of 3 in home living, 5 in health and safety, 8 in leisure and 5 in social. These achieved scores in the remaining subcomponents of Capacity for Independent Living are not considered as eligible scores according to the functionality criteria.

The Claimant's Mobility was not assessed as part of the ABAS; however, narrative documentation outlined in the IPE documents that the Claimant is fully ambulatory and has effective use of all limbs and demonstrates no requirement for any assistive devices.

- 3) The Claimant's representatives asserted that their son exhibits delays in all of the life areas except Mobility. Testimony indicated that the Claimant requires prompting with Self-Care and medications and lacks necessary Self-Direction skills when independently functioning. Testimony indicated that when left alone, the Claimant can make inadequate choices regarding

time management and can be easily distracted. Testimony indicated that the Claimant lacks appropriate social skills and requires constant supervision to ensure his health and safety. The Claimant's representatives provided letters (Exhibit C-1a through Exhibit C-1e) from themselves, as well as other individuals familiar with the Claimant, which describe the Claimant's difficulties in the major life areas.

- 4) West Virginia Medicaid Regulations, Chapter 513 - Applicant Eligibility and Enrollment Process for I/DD Waiver Services (D-1), includes the following pertinent medical eligibility criteria:

513.3.2 Initial Medical Eligibility

To be medically eligible, the applicant must require the level of care and services provided in an ICF/MR as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/MR provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/MR provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

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

The MECA determines the qualification for an ICF/MR level of care (medical eligibility) based on the IPE that verifies that the applicant has mental retardation with concurrent substantial deficits manifested prior to age 22 **or** a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. For the I/DD Waiver program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive I/DD Waiver Program Services, an applicant must meet the medical eligibility criteria in each of the following categories:

- a. Diagnosis;
- b. Functionality
- c. Need for active treatment.

513.3.2.1 Diagnosis

The applicant must have a diagnosis of mental retardation with concurrent substantial deficits manifested prior to age 22 or a related condition which

constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the I/DD Waiver Program include but are not limited to, the following:

- Autism
- Traumatic brain injury
- Cerebral Palsy
- Spina Bifida; and
- 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, and requires services similar to those required for persons with mental retardation.

Additionally, the applicant who has a diagnosis of mental retardation and/or a severe related condition with associated concurrent adaptive deficits must meet the following requirements:

- Likely to continue indefinitely; and,
- Must have the presence of at least three substantial deficits out of the six identified major life areas listed in Section 513.3.2.2.

513.3.2.2 Functionality

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,

- Capacity for independent living (home living, social skills, employment, health and safety, community and leisure activities).

Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75 percentile when derived from MR normative populations when mental retardation has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

513.3.2.3 Active Treatment

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

VIII. CONCLUSIONS OF LAW:

- 1) Policy and regulations that govern the I/DD Waiver program require eligible individuals to have a diagnosis of mental retardation, or a related condition, which constitutes a severe and chronic disability with concurrent substantial deficits in three of the six major life areas prior to age 22. Substantial deficits are defined on standardized measures of adaptive behavior scores as three (3) standard deviations below the mean or less than one (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 not only by the relevant test scores, but also by narrative descriptions contained in the documentation submitted for review. Therefore, an eligible score on administered test must first be identified and then supported by the narrative documentation.
- 2) Based on a review of the clinical information submitted during the hearing, the Claimant was awarded a substantial deficit in the area of Learning. However the Claimant did not demonstrate substantial deficits, which were supported by relevant test scores and narrative documentation, in three of the six major life areas according to the functionality criteria. While the Claimant achieved an eligible score in community use, a subcomponent of Capacity for Independent Living, the totality of evidence in the remaining subcomponents of this life area, community use, home living, health and safety, leisure and social skills failed to meet the

eligibility standard for a deficit in the contested life area. Because the Claimant failed to meet the functionality criteria as set forth by governing policy, medical eligibility for participation in the Medicaid I/DD Waiver program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the Claimant's application for benefits and services under the Medicaid I/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ day of June 2012.

**Eric L. Phillips
State Hearing Officer**