



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

June 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 14, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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 Home and Community-Based 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 have a diagnosis of mental retardation and/or a related condition. The condition must be severe and chronic with concurrent substantial deficits manifest prior to the age of 22 that 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 Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program]

Information provided at the hearing fails to 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 Department's action to deny your application for benefits and services through the Medicaid I/DD Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review

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

IN RE: -----,

Claimant,

vs.

Action No.: 12-BOR-1128

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing 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 convened on June 14, 2012, on a timely appeal filed April 9, 2012.

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

██████████ Case Manager, ██████████ Services

██████████ Counselor, ██████████ Services

Jennifer Eva, I/DD Service Support Facilitator, APS Healthcare

Linda Workman, Psychologist Consultant, Bureau for Medical Services

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's application for benefits and services through 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 Denial/Termination dated February 22, 2012
- D-3 Independent Psychological Evaluation (IPE) dated February 6, 2012
- D-4 Correspondence from -----, M.D., dated November 28, 1994
- D-5 ----- Medical Center - Psychiatric Evaluation & Medical Review - Admitted 2/11/11
- D-6 ----- Medical Center – Discharge Summary – Admitted 1/28/11
- D-7 ----- Health System, Individual Treatment Plan – February 2011
- D-8 ----- Psychological Services, PLLC, Diagnostic Interview Examination by Psychologist dated 1/21/09
- D-9 -----Hospitals, Discharge Note dated 3/10/10
- D-10 ----- Psychological Services, PLLC, Psychological Interview with Report – dated 10/23/06
- D-11 [REDACTED] Center – MRI of the brain – 3/23/05
- D-12 -----School of Medicine – Neuropsychological Evaluation dated 8/15/96

VII. FINDINGS OF FACT:

- 1) On or about February 22, 2012, the Claimant was notified via a Notice of Denial/Termination (D-2) that his application for Medicaid I/DD Waiver Program benefits had been denied. The notice indicates that the presence of mental retardation with associated substantial adaptive deficits prior to the age of 22 was not supported within the documentation submitted for review. The notice further indicates that the documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas.
- 2) The Department, represented by Jennifer Eva, APS Healthcare, introduced its exhibits and called Linda Workman, a Psychologist Consultant employed by the Bureau for Medical

Services (BMS), to testify about the medical eligibility findings.

- 3) Testimony proffered by Linda Workman reveals that the Department was unable to confirm that the Claimant presented a diagnosis of mental retardation, with substantial adaptive deficits, prior to the age of 22 years. Ms. Workman noted that the Claimant was reported to be in a special education classroom throughout his years of school, and that he was retained in 12th grade because of a math credit, but he graduated high school with a regular diploma.

The first document to indicate the Claimant presented a diagnosis of mental retardation is correspondence from -----, M.D. (D-4), dated November 28, 1994 (Claimant would have been 21-years-old), which states – “Please be advised that -----is suffering from Attention Deficit Disorder (ADD) and mental retardation. He is basically disabled from these conditions for the purpose of gainful employment.” It was noted, however, there were no clinical testing results or psychometric data to support -----diagnosis, and it appears this statement was drafted for the purpose of an employment disability evaluation, not institutionalization or specialized services.

Historical information noted in Exhibit D-3, and confirmed in Exhibits D-8 (Diagnostic Interview Examination by Psychologist - dated 1/21/09), D-9 (----- Hospitals Discharge Note - dated 3/10/10), D-10 (Psychological Interview with Report – dated 10/23/06) and D-12 (Neuropsychological Evaluation – dated 8/15/96), includes psychometric data and clinical documentation that confirms the Claimant presented a diagnosis of Borderline Intellectual Functioning, with some achievement testing results in the low average range, for period that includes almost 14 years.

Ms. Workman acknowledged that documentation generated in 2011 (Exhibits D-5, D-6 and D-7) references a mental retardation diagnosis, but it is unclear where this diagnosis originated without any testing results. Ms. Workman further acknowledged that mild mental retardation has been provided as a diagnosis in the current evaluation (D-3), however, this information is inconsistent with historical data and fails to identify any substantial adaptive deficits in the major life areas.

- 4) As a matter of record, the Claimant’s representatives acknowledged that they have been unable to find documentation to confirm a diagnosis of mental retardation, with substantial adaptive deficits, prior to the age of 22 because the Claimant’s school records were destroyed in a fire. The Claimant’s representatives further agreed that the current evaluation (D-3) does not identify any substantial adaptive deficits in the major life areas because the Claimant’s mother continues to work with him to manage daily tasks. The concern, as noted by the Claimant’s representatives, is the risk that the Claimant’s abilities in the major life areas will deteriorate when his mother is unable to continue providing care.
- 5) Linda Workman offered rebuttal testimony to indicate that if the Claimant’s condition was severe, there would have been involvement, and therefore documentation, from other sources beyond public school to confirm a diagnosis of mental retardation prior to the age of 22.

- 6) 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) Regulations that govern the I/DD Waiver Program require eligible individuals to have a diagnosis of mental retardation (and/or a related condition), which must be severe and chronic, in conjunction with substantial deficits in three (3) or more of the major life areas which manifested prior to age 22. "Substantially limited" is 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 the narrative descriptions contained in the documentation submitted for review.
- 2) Evidence submitted at the hearing fails to confirm that the Claimant was diagnosed with mental retardation, and demonstrated substantial adaptive deficits, prior to the age of 22. While the most recent evaluation provides a diagnosis of mental retardation, the clinical evidence fails to confirm that the Claimant is demonstrating substantial adaptive deficits in three (3) or more of the major life areas.
- 3) Whereas the Claimant does not meet the diagnostic and functionality requirements, 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 benefits and services through the 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.

**Thomas E. Arnett
State Hearing Officer**