



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 26, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 6, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of I/DD Waiver services for -----.

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. These regulations state that in order to be eligible for the I/DD 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 manifested 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]

The information submitted at the hearing failed to meet the medical criteria required for the I/DD Waiver program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny ----- services under the I/DD Waiver program.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
APS Healthcare

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1745

**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 convened on September 6, 2012, held by telephone conference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed July 13, 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

-----, Representative for Claimant

Linda Workman, Consulting Psychologist, Bureau of Medical Services

Presiding at the Hearing was Kristi Logan, 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 Claimant was correctly denied eligibility for I/DD Waiver services.

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 July 3, 2012
- D-3 Individual Psychological Evaluation dated June 5, 2012

Claimants’ Exhibits:

- C-1 Order of Appointment of Guardian and/or Conservator
- C-2 Medical Records from [REDACTED] Associates
- C-3 Medical Records from ----- Medical Center
- C-4 Medical Records from ----- Psychiatric Services
- C-5 Disability Determination Examination dated August 13, 2010

VII. FINDINGS OF FACT:

- 1) On or about July 3, 2012, the Claimant was notified via a Notice of Denial/Termination that her application for Medicaid I/DD Waiver Program benefits was denied. The notification letter reads in pertinent part (D-2):

Psychometric testing indicates that -----’s intellectual impairment is very mild. Her degree of intellectual disability is not typically associated with the need for an institution level of care.

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.

- 2) The Department, represented by Linda Workman, a psychological consultant employed by Psychological Consultation & Assessment (PC&A), contracted by the Department of

Health and Human Resources' (Department) Bureau for Medical Services (BMS), contends that while the Claimant may require prompting, oversight and supervision, she does not require the level of active treatment, or care, that is provided in an institutional setting. Ms. Workman contends that Claimant's intellectual disability is in the moderate to borderline range of functioning and this is furthermore supported by the fact that the Claimant is not demonstrating a substantial adaptive deficit in any of the six (6) major life areas.

- 3) The Adaptive Behavior Assessment System, Second Edition (ABAS-II) was administered to Claimant during an Individual Psychological Evaluation on June 5, 2012. Ms. Workman testified this test assesses all six (6) of the major life areas required for eligibility for I/DD Waiver services. For this test, Ms. Workman stated the mean is ten (10), with a standard deviation of three (3). Using these guidelines, Ms. Workman stated an eligible score on the ABAS-II is a one (1) or a two (2). Claimant's scores as documented on the Individual Psychological Evaluation are (D-3):

- Self-care – 3
- Functional academics (learning) – 3
- Communication (receptive or expressive language) – 4
- Self-direction – 4
- Community use (capacity for independent living) – 2
- Home living (capacity for independent living) – 4
- Health and safety (capacity for independent living) – 4
- Leisure (capacity for independent living) – 3
- Social (capacity for independent living) – 4

- 4) Ms. Workman stated Claimant's only eligible score on the ABAS-II was in the area of community use, which is a component of the major life area of capacity for independent living. An eligible score in only one (1) of the five (5) components of capacity for independent does not equate as a substantial deficit in that area. The individual psychological evaluation (D-3) noted Claimant to be ambulatory, which does not qualify as a substantial adaptive deficit in the area of mobility.
- 5) The Wechsler Abbreviated Scale of Intelligence (WASI) was also administered to Claimant during the June 2012 psychological evaluation, which evaluates intellectual and cognitive functioning. Claimant was determined to have a full scale IQ of 69. Ms. Workman testified Claimant falls at the border of mild mental retardation and borderline intellectual functioning with this score (D-3).
- 6) The Wide Range Achievement Test, Revision Four (WRAT-4), evaluates an individual's achievements. For this evaluation, Ms. Workman stated the mean is 100, with a standard deviation of 15. Eligible scores for the WRAT-4 are a standard score of 55 and below. Claimant's scores from this assessment are (D-3):

- Word reading – 76
- Spelling – 92

- 7) Ms. Workman stated Claimant's intellectual deficits are attributed to a chromosomal abnormality and based on her test scores, she was given a diagnosis of mild mental retardation. While Claimant is clearly delayed in several of the major life areas, Ms. Workman stated her intellectual and functional abilities are not to the degree of requiring an institutional level of care.
- 8) Claimant's mother, -----, testified she was awarded legal guardianship of Claimant due to her mental capacity and inability to manage money (C-1). ----- testified Claimant receives Supplemental Security Income (SSI) due to her intellectual disabilities. ----- stated Claimant reads often, but has no comprehension over what she just read. She cannot manage money and needs help with her hygiene. Claimant can handle a few household chores such as making her bed or using the microwave.

----- stated Claimant does not drive and may never be able. She works ten (10) hours a week as a hostess in a restaurant, but often has anxiety attacks at work. ----- stated Claimant will never be able to live independently, and needs the Waiver program in case something were to happen to her or her husband.
- 9) 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 reveals that while the Claimant meets diagnostic criteria, there is insufficient evidence to demonstrate she requires the level of care and services provided in an ICF/MR facility, or that she is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas.
- 3) Whereas the evidence fails to demonstrate the Claimant meets medical eligibility criteria, participation in the Medicaid I/DD Waiver Program was correctly denied.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant I/DD Waiver services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th day of September 2012

**Kristi Logan
State Hearing Officer**