



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 4, 2012

---- for ----

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 3, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your son's 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 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 during the hearing reveals that your son does not meet the diagnostic 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 benefits and services through the Medicaid I/DD Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Tiffany Angel, APS Healthcare

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

IN RE: ----,

Claimant,

vs.

Action No.: 12-BOR-1854

**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 October 3, 2012, on a timely appeal filed July 19, 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's mother

----, Licensed Psychologist, ----, and Long-Term Care Clinical Consultant, Bureau for Medical Services

----, Psychologist Consultant, Bureau for Medical Services

Presiding at the hearing was Pamela L. Hinzman, 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 benefits and services through the Medicaid I/DD Waiver Program.

V. APPLICABLE POLICY:

West Virginia Medicaid Regulations Chapter 513.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Medicaid Regulations Chapter 513.3
- D-2 Notice of Denial/Termination dated June 20, 2012
- D-3 Independent Psychological Evaluation dated May 25, 2012

VII. FINDINGS OF FACT:

- 1) On or about June 20, 2012, the Claimant was notified via a Notice of Denial/Termination (D-2) that his Medicaid I/DD Waiver Program benefits were denied. This notice states, in pertinent part:

Your Waiver Application is hereby denied.

Your application was denied/terminated because:

----- has not been awarded an eligible diagnosis for the Title XIX I/DD Waiver program. Eligibility cannot be established on the basis of a provisional diagnosis. Substantial adaptive deficits, if present, must be due to an eligible diagnosis in order to meet medical eligibility criteria.

- 2) ----, Licensed Psychologist and Long-Term Care Clinical Consultant for the Department's Bureau for Medical Services, reviewed policy and referred to Exhibit D-3, an Independent Psychological Evaluation completed for the Claimant on May 25, 2012. Diagnostic information in Section V of the document lists no Axis I diagnosis, and an Axis II diagnosis of provisional mild mental retardation. Ms. ---- testified that provisional diagnoses are offered when the evaluating psychologist has insufficient information to make a firm diagnosis. Ms. --- stated that the Claimant is two years old, and it is difficult to determine eligibility for very young children.

- 3) The Claimant's mother, ----, testified that her son has several of the adaptive deficits described in policy. Ms. ---- agreed that the Psychological Evaluation indicates that the child has aspects of the functional criteria, however, he cannot be determined eligible for the I/DD Waiver Program based on a provisional diagnosis. Ms. ---- stated that the Claimant could reapply for benefits as his development progresses.
- 5) 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 APPLICANT ELIGIBILITY AND ENROLLMENT PROCESS

In order for an applicant to be found eligible for the I/DD Waiver Program, they must:

- Meet medical eligibility;
- Meet financial eligibility;
- Be a resident of West Virginia; and
- Have chosen Home and Community-Based Services over services in an institutional setting (ICF/MR).

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, may [*sic*] 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 the diagnosis of mental retardation 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;
- 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.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations that govern the I/DD Waiver Program require medically 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.
- 2) Clinical evidence submitted at the hearing reveals that the Claimant is two years old and has a provisional diagnosis of mild mental retardation. The Department's representative explained that a provisional diagnosis is awarded when there is insufficient information to establish a specific diagnosis. As no clear diagnosis has been specified, the Department could not determine that the Claimant meets diagnostic criteria.

- 3) Whereas the Claimant does not meet diagnostic requirements in the medical eligibility criterion, 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 October 2012.

**Pamela L. Hinzman
State Hearing Officer**