



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

October 3, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the 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 your hearing revealed that ----- does not meet the medical criteria to receive I/DD Waiver services.

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-1909

**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 held on September 6, 2012, by videoconference. 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 August 1, 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 for Medical Services (testified by phone)

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 the Department's denial of I/DD Waiver services for Claimant was correct.

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 June 11, 2012
- D-3 Independent Psychological Evaluation dated May 16, 2012

VII. FINDINGS OF FACT:

- 1) On or about June 11, 2012, Claimant was notified via a Notice of Denial/Termination that his application for Medicaid I/DD Waiver Program benefits was denied. The notification letter reads in pertinent part (D-2):

[Claimant] has not been awarded an eligible diagnosis for the Title XIX I/DD Waiver Program of intellectual disability or a related developmental condition.

- 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 Claimant has not been given an eligible diagnosis for participation in the program. Medical eligibility for I/DD Waiver services consists of a diagnosis of mental retardation or related condition and at least three (3) substantial deficits of the six (6) major life areas.
- 3) According to the Individual Psychological Evaluation conducted on May 16, 2012 (D-3), Ms. Workman stated Claimant is diagnosed with Disorder of Infancy, Childhood or Adolescence, Not Otherwise Specified, possible sleep apnea, and psychosocial and environmental problems. The Axis II diagnosis was deferred. Ms. Workman stated it is the Axis II diagnosis that evaluates possible mental retardation or similar conditions.

Ms. Workman testified that because there has been no diagnosis of mental retardation or related condition, Claimant did not meet the criteria for I/DD Waiver services.

Ms. Workman noted for the record that Claimant had eligible scores on the Adaptive Behavior Assessment Scale, Second Edition (ABAS-II) (D-3) in the major life areas of functional academics (learning), self-care, self-direction and motor (mobility).

- 4) Claimant's mother, -----, testified Claimant is receiving services through the Birth to Three program. ----- stated Claimant's physician has been unable to diagnosis the reason for his functional delays, and he is still undergoing medical testing. ----- stated cerebral palsy has been ruled out and Claimant is scheduled to have another sleep study next month. She has been told Claimant has mylenation of the muscles.
- 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:

513.3.2 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.

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.

- 2) Based on the lack of an eligible diagnosis of mental retardation or related condition as defined by policy, Claimant does not meet the medical criteria to receive I/DD Waiver services.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd day of October 2012

Kristi Logan
State Hearing Officer