



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

November 30, 2012

WVDHHR

RE: ----

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held November 7, 2012, for ----. Mr. ----'s hearing request was based on the Department of Health and Human Resources' action to deny his 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 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 Mr. ---- 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-2146

**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 via videoconference on November 7, 2012, on a timely appeal filed August 27, 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

----, Adult Protective Service Worker, WVDHHR (Claimant's guardian)

----, Social Worker, ---- Hospital

----, Health Service Worker, ----Hospital

----, Licensed Psychologist, ----Clinical 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 application for 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 August 1, 2012
- D-3 Independent Psychological Evaluation dated May 12, 2012
- D-4 Comprehensive Psychological Evaluation (Triennial) dated March 31, 2012
- D-5 Psychosocial History dated November 21, 2011

Claimant's Exhibits:

- C-1 Records from ---- County Schools

VII. FINDINGS OF FACT:

- 1) On or about August 1, 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:

Mr. ---- has a well-documented history of serious mental illness with interventions to date designed to address this condition. No documentation was submitted which supports the presence of a diagnosis of intellectual disability with associated substantial adaptive deficits within the developmental period, prior to the onset of mental illness. Individuals whose primary diagnosis is serious mental illness are specifically excluded from

participation in the Title XIX I/DD Waiver program. Further, adaptive deficits must be due to an eligible diagnosis to meet eligibility criteria for the Waiver program.

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, Self-Direction, Receptive or Expressive Language and Mobility.

- 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 12, 2012. Diagnostic information in Section V of the document lists Axis I diagnoses of Mood Disorder-NOS and Intermittent Explosive Disorder, and an Axis II diagnosis of mild mental retardation. The document states that the Claimant, age 36, has had 15 admissions to ---- Hospital, and that his current court-ordered admission is due to domestic battery and battery of a policy officer. Prior admissions were for assaultive behaviors, and one admission was for an overdose. The evaluation states that the Claimant has a history of incarceration at ----Jail and of receiving psychiatric treatment at ----in [REDACTED] g. He has also been treated on an outpatient basis at --in [REDACTED]

The May 2012 Psychological Evaluation cites the results of a previous evaluation in February 2012, during which the Claimant attained a verbal IQ score of 58, a performance IQ of 65 and a full-scale IQ of 51. The Claimant attained a full-scale IQ score of 54 on the WAIS-IV testing instrument and the evaluator indicated that he functions in the mild range of mental retardation. Ms. ---- also reviewed the Claimant's Adaptive Behavior Assessment System II and Wide Range Achievement Test (WRAT)-4 scores, and indicated that he exhibited substantial delays in learning and capacity for independent living.

Ms. ---- reviewed Exhibit D-4, a Comprehensive Psychological Evaluation (Triennial) dated March 31, 2012, which indicates no Axis I diagnosis and an Axis II diagnosis of moderate mental retardation. She reviewed a Psychosocial History dated November 21, 2011, but indicated that the document does not reference the Claimant's early developmental history, although it is noted that the Claimant had difficulty sitting still in school and was prescribed Prozac.

Ms. ---- summarized that no evidence was provided to demonstrate the presence of mental retardation with concurrent substantial deficits in the developmental period. She contended that the Claimant's current problematic issues are related to a primary diagnosis of mental illness.

- 3) ----, Social Worker at ----Hospital, testified that he has known the Claimant for several years and has only recently obtained records from ----County Schools that indicate the Claimant

was in special education classes. Mr. ---- believes the Claimant's deficits are related to mental retardation, and he contended that the Claimant is deficient in self-direction, capacity for independent living and functional academics. He also cited the Claimant's difficulties with issues involving health/safety and money management.

- 4) Ms. ---- indicated that the Department would review the additional information from ---- County Schools (C-1) and determine whether the documents provide any significant information concerning delays during the Claimant's developmental period. The hearing record remained open until November 19, 2012, to allow the Department an opportunity to review the school records. The Department did not notify the Hearing Officer of any change in its eligibility determination. The Hearing Officer reviewed Exhibit C-1 and determined that it contains no verification that the Claimant met diagnostic criteria prior to age 22.
- 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 fails to demonstrate that the Claimant had a

diagnosis of mental retardation and/or a related condition with concurrent substantial deficits which manifested prior to age 22.

- 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 November 2012.

**Pamela L. Hinzman
State Hearing Officer**