



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

May 18, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 17, 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 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 you do not 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,

Cheryl Henson  
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,**

**v.**

**Action No.: 12-BOR-854**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on May 17, 2012.

The hearing was held by telephone conference call. All persons giving testimony were placed under oath.

**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 representative

Nora Oscanyan, Department's representative  
Linda Workman, Department's witness

Presiding at the hearing was Cheryl Henson, 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 513.3 – Applicant Eligibility and Enrollment Process, October 1, 2011
- D-2 Notice of Denial/Termination dated January 27, 2012
- D-3 Independent Psychological Evaluation dated January 10, 2012

##### **Claimant's Exhibits:**

None

#### **VII. FINDINGS OF FACT:**

- 1) On or about January 27, 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. This notice states, in pertinent part:

Your Waiver Application is hereby denied.

Your application was denied/terminated because:

**DOCUMENTATION SUBMITTED FOR REVIEW DOES NOT SUPPORT  
THE NEED FOR ACTIVE TREATMENT NOR ICF/MR LEVEL OF CARE.**

Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Self-Direction, Receptive or Expressive Language, Mobility, and Capacity for Independent Living.

Reviewer relied on the following fact: 1/10/12 IPE

It should be noted that the Claimant was awarded a substantial adaptive deficit in the area of Learning.

- 2) The Claimant's representative, -----, is his mother. She contends that the Claimant also meets the policy criteria regarding having substantial adaptive deficits in the areas of Self-Direction and Capacity for Independent Living. She also contends that the Claimant requires active treatment as well as Intermediate Care Facility/Mentally Retarded [ICF/MR] level of care.
- 3) The Department contends that the Claimant's test scores as well as the narrative information provided on the Independent Psychological Evaluation [IPE] (D-3) do not support that the Claimant has substantial deficits in the area of Self-Direction and Capacity for Independent Living. The Department also contends that the information submitted during the application process does not support that the Claimant needs active treatment as well as ICF/MR level of care.
- 4) The Department's witness, Linda Workman, is a licensed psychologist and a psychological consultant for the Department. She stated that, based on the information provided in the Claimant's application for I/DD Waiver services, she found that although the Claimant has a qualifying diagnosis of Mental Retardation, he met none of the other areas of eligibility for the program.

Ms. Workman, in explaining why the Claimant did not meet the criteria in having at least three (3) substantial deficits out of the six (6) major life areas, stated that areas of testing on the IPE (D-3) support that the Claimant has a substantial deficit in only one (1) area [functional academics] – the major life area of Learning. On the Adaptive Behavior Assessment System [ABAS-II] test – which the psychologist explained requires a score of one (1) or two (2) in order to qualify – the Claimant had only one score in that range – that being a score of one (1) in “Functional Academics.” He scored above the eligible range on all the other sub-tests.

Ms. Workman also explained that the psychologist who completed the IPE (D-3) for the Claimant documented in her report that she did not find that the Claimant requires active treatment equivalent to that provided in an ICF/MR institutional setting; she also did not find that the Claimant requires the same level of care as provided in an ICF/MR institutional level of care.

- 5) ----- testified that the Claimant has always worked in small groups; that he is very motivated; that being able to work offers him a social outlet; that if the Claimant is not kept busy, he will wander away from work to find someone to interact with; that he needs help in obtaining a job and an apartment; and that he needs job training as well as training to ride the

bus. She added that he has no brothers or sisters to look out for him if something happens to her. She concluded that she is proud of the Claimant. She offered no other testimony or evidence in support of her claim.

- 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 [Intermediate Care Facility/Mental Retardation] 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.

### **513.3.2.2 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 substantial deficits in three (3) or more of the six (6) major life areas. “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. This means there must first be eligible scores, and that only if there are eligible scores is the information in the narrative considered.

For the purposes of this hearing, the test scores submitted for review (D-3) were derived from a “general norms” population from the ABAS II test administered by the evaluating psychologist; therefore, the policy which requires a score to be three (3) standard deviations below the mean or less than one (1) percentile is applicable. The psychological consultant’s testimony is found to be credible. She provided that scaled scores of one (1) or two (2) are needed to show a substantial deficit based on the ABAS II test results. Scores above that are not eligible.

- 2) Clinical evidence submitted at the hearing fails to confirm that the Claimant is demonstrating substantial adaptive deficits in three (3) or more of the major life areas. While the Department conceded that the Claimant is demonstrating a substantial adaptive deficit in Learning, the standardized measures of adaptive behavior scores fail to confirm substantial adaptive deficits in any of the other functional areas reviewed for eligibility.

The Claimant’s contention that the evidence shows he also has substantial deficits in the major life areas of Self-Direction and Capacity for Independent Living is not supported by the evidence. The Claimant’s scores in these areas were above those required to be considered eligible.

The Claimant’s contention that he requires the intense level of active treatment at ICF/MR level and that he requires ICF/MR level of care is not supported by the evidence. The evaluating psychologist clearly indicated (D-3) that the Claimant does not have this level of need.

- 3) Whereas, the Claimant does not meet the functionality requirements in the medical eligibility criterion, and does not meet the requirement for need of active treatment at ICF/MR level of care, 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 18<sup>th</sup> Day of May 2012.**

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**Cheryl Henson  
State Hearing Officer**