



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

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

June 8, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for ----- hearing held May 10, 2012. The hearing request was based on the Department of Health and Human Resources' denial of ----- application for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program based on medical reasons.

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. Policy states that an applicant must demonstrate a requirement for the level of care and services provided in an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) (West Virginia Medicaid Provider Manual, Chapter 513, §513.3.2), must demonstrate a benefit from continuous active treatment (West Virginia Medicaid Provider Manual, Chapter 513, §513.3.2.3), and must demonstrate the presence of substantial deficits in at least three of six major life areas (including self-care, receptive or expressive language, learning, mobility, self-direction, and capacity for independent living) supported not only by relevant test scores, but also the narrative descriptions of the applicant (West Virginia Medicaid Provider Manual, Chapter 513, §513.3.2.2).

Information submitted at the hearing revealed that the documentation submitted with ----- application for the I/DD Waiver Program failed to support the level of care or active treatment requirements, and failed to demonstrate substantial deficits in any of the major life areas identified by policy.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of ----- application for the I/DD Waiver Program based on medical reasons.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Jennifer Eva, Department Representative  
Linda Workman, PC&A

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

**BOARD OF REVIEW**

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-858**

**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 concluded on June 8, 2012, 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 was convened on May 10, 2012, on a timely appeal, filed February 27, 2012.

**II. PROGRAM PURPOSE:**

The Intellectual Disabilities 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 representative, guardian and conservator  
Jennifer Eva, Department's representative  
Linda Workman, Department's witness

Presiding at the Hearing was Todd Thornton, 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 decision to deny I/DD Waiver Program services to the Claimant based on a finding that medical eligibility was not met.

**V. APPLICABLE POLICY:**

West Virginia Medicaid Provider Manual, Chapter 513 – Covered Services, Limitations, and Exclusions for I/DD Waiver Services, effective October 1, 2011

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 West Virginia Medicaid Provider Manual, Chapter 513 – Covered Services, Limitations, and Exclusions for I/DD Waiver Services, effective October 1, 2011
- D-2 Notice of Denial/Termination dated February 2, 2012
- D-3 Independent Psychological Evaluation, evaluation date January 5, 2012

**VII. FINDINGS OF FACT:**

- 1) The Claimant, who is a 20-year old applicant for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program, received notification of denial for the program (Exhibit D-2) on or about February 2, 2012. This notice explained that the Claimant was denied because the documentation submitted did not support the need for the level of care provided in an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR), the need for active treatment, or the presence of substantial adaptive deficits in any of the six major life areas identified by policy for I/DD Waiver eligibility.
  
- 2) The West Virginia Medicaid Provider Manual, Chapter 513 – Covered Services, Limitations, and Exclusions for I/DD Waiver Services, effective October 1, 2011 (Exhibit D-1), at §513.3.2, outlines the level of care requirement as follows, in pertinent part:

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.

3) Linda Workman, Psychologist Consultant for the Department, testified regarding her background and experience as a licensed psychologist since 1981. She noted her reviews of the program applications and extensive history with the underlying eligibility criteria for the I/DD Waiver Program and the population of individuals eligible for both the I/DD Waiver Program and for the ICF/MR Group Homes, which share identical medical eligibility criteria. In her review of the Claimant's Independent Psychological Evaluation (Exhibit D-3) – completed by -----, Licensed Psychologist – Ms. Workman noted that ----- concluded that the Claimant does not require the same level of care as provided in an ICF/MR institution. Ms. Workman testified that based on her review of the documentation provided she agrees that the Claimant does not require this level of care.

4) The West Virginia Medicaid Provider Manual, Chapter 513 – Covered Services, Limitations, and Exclusions for I/DD Waiver Services, effective October 1, 2011 (Exhibit D-1), at §513.3.2.3, outlines the active treatment requirement, as follows:

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.

5) Ms. Workman testified that she concluded the Claimant does not meet the active treatment requirement, based on her review of the documentation submitted on the Claimant's behalf. Ms. Workman noted that -----, the Claimant's evaluating psychologist, concluded in her evaluation (Exhibit D-3) that the Claimant does not "...require active treatment equivalent to that provided in an ICF/MR institutional setting[.]"

6) The West Virginia Medicaid Provider Manual, Chapter 513 – Covered Services, Limitations, and Exclusions for I/DD Waiver Services, effective October 1, 2011 (Exhibit D-1), at §513.3.2.2, outlines the functionality requirement, as follows:

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.

- 7) Ms. Workman testified that ----- assessed the Claimant's functionality in her evaluation (Exhibit D-3) using two instruments: the Adaptive Behavior Assessment System II (ABAS II) and the Wide Range Achievement Test 4 (WRAT 4). Ms. Workman testified that the ABAS II assesses all six major life areas set forth in policy, including the six sub-domains of the area of *Capacity for independent living*. In conjunction with the results on the Functional Academics skill area of the ABAS II, the WRAT 4 was used to assess the major life area of *Learning*. Ms. Workman testified that the ABAS II norms are derived from a sample representing the general population. As a result, scaled scores indicative of substantial deficits could either be three standard deviations below the mean or less than one percentile. Ms. Workman testified that the requirement for a score three standard deviations below the mean would be met with a scaled score on the ABAS II of one, because for this instrument the mean is ten and the standard deviation is three. However, Ms. Workman additionally testified that the alternate requirement – a score less than one percentile – can be met with a scaled score of two because a portion of such scores are in this range. Ms. Workman added that because it cannot be determined which scaled scores of two on the ABAS II are less than one percentile and which are not, the Department accepts a scaled score of two on a given skill area subtest of the ABAS II as indicative of a substantial deficit in the corresponding major life area. The Claimant scored three or higher on all skill area subtests of the ABAS II. Ms. Workman testified that the Claimant obtained a standard score of 55 on the Math Computation subtest of the WRAT 4 – a score three standard deviations below the mean for this instrument – but the other two subtest scores (64 for Word Reading and 62 for Spelling) did not meet this threshold; further, this instrument was used by Ms. Workman in conjunction with the Functional Academics skill area subtest of the ABAS II to make a determination in the major life area of *Learning*, and that score failed to establish a substantial deficit for the Claimant. Ms. Workman contended that the Claimant's test scores seem to be consistent with the narrative in the evaluation (Exhibit D-3) of the Claimant.

- 8) -----, the guardian and conservator for the Claimant, testified that the Claimant cannot live on her own. He testified that the Claimant can communicate, but only with those who can understand her. He testified that the Claimant can cook as long as someone is with her for safety reasons. Additionally regarding safety he testified that although she does not have a driver's license, the Claimant took -----'s truck and drove it, even after the police were chasing her. He testified that the Claimant requires prompting for most things, does not understand the value of money, and cannot take her medications on her own. He testified that the Claimant would stay in bed all day if she were not directed to an activity, although he testified that she would self-direct with regard to television and video games.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The regulations that govern the I/DD Waiver Program require eligible individuals to require an ICF/MR level of care, require active treatment, and present severe functionality limits established through testing and narrative. The Department determined from the direct statements of the Claimant's evaluating psychologist that the Claimant did not meet the level of care requirement or the active treatment requirement. The Department's Psychologist Consultant concurred with these findings by the evaluating psychologist.
- 2) The psychological evaluation of the Claimant included testing and narrative related to the functionality of the Claimant in the six major life areas identified by I/DD Waiver Program policy. Test results revealed the Claimant does not meet the substantial deficit standard in any of the six major life areas. The Department's Psychologist Consultant testified that the narrative descriptions of the Claimant are consistent with her test results. The Claimant did not meet the functionality requirement.
- 3) With level of care, active treatment, and functionality requirements unmet, the Department was correct to deny the Claimant's application for the I/DD Waiver Program.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department that documentation submitted on behalf of the Claimant did not support a finding of medical eligibility for 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 \_\_\_\_ Day of June, 2012.**

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**Todd Thornton  
State Hearing Officer**