



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

Karen L. Bowling
Cabinet Secretary

February 27, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1011

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

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

cc: Chairman, Board of Review
[REDACTED], Claimant's aunt
Taniua Hardy, WVDHHR

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1011

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision 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 was convened on February 25, 2015, on an appeal filed January 2, 2015.

The matter before the Hearing Officer arises from the October 28, 2014 decision by the Respondent to deny the Claimant's application for benefits through the Title XIX I/DD Waiver Medicaid Program.

At the hearing, the Respondent was represented by Richard Workman, Psychologist Consultant for the Bureau for Medical Services. The Claimant was represented by his aunt, ██████████, and ██████████, Social Worker, ██████████ Hospital. Appearing as witnesses for the Claimant were ██████████, M.D., and ██████████, RN, ██████████ Hospital. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Regulations Chapter 513.3
- D-2 Notice of Denial dated October 28, 2014
- D-3 Independent Psychological Evaluation dated September 16, 2014
- D-4 Progress Notes dated September 25, 2013
- D-5 Progress Notes dated March 7, 2014
- D-6 Progress Notes dated June 17, 2014

Claimant's Exhibits:

- C-1 Medical records from 1973 and 1998

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On or about October 28, 2014, the Claimant was notified via a Notice of Denial (D-2) that his I/DD Waiver Medicaid Program application had been denied. The notice advises that benefits were denied because documentation submitted for review did not support the presence of substantial adaptive deficits in any of the six (6) major life areas identified for Waiver eligibility.
- 2) Richard Workman, Psychologist Consultant for the Bureau for Medical Services, testified that while the Claimant, age 49, has a potentially-eligible diagnosis of intellectual disability, documentation failed to support the presence of substantial deficits in any of the six (6) major life areas.

Mr. Workman reviewed the documentation considered in the eligibility determination, including Exhibit D-3, an Independent Psychological Evaluation completed by [REDACTED] on September 16, 2014. He reviewed the Claimant's Adaptive Behavior Assessment System-Second Edition (ABAS-II) scores, indicating that scores of one (1) or two (2) in various skill areas are considered eligible scores for the I/DD Waiver Program. The Claimant received ineligible ABAS-II scores in communication (6), home living (4), health and safety (3), leisure (7), self-care (4), self-direction (3) and social (4).

Mr. Workman indicated that the Claimant received eligible scores of 2 in the areas of functional academics and community use (which is a sub-component of the major life area of capacity for independent living). However, narrative information contained in Exhibit D-3 concerning the Claimant's functional area of learning did not support awarding a deficit in learning. Documentation indicates that the Claimant writes his own first and last name, reads his own written name, states the days of the week in order, tells time correctly using a clock with hands, reads and obeys common signs, and reads menus in restaurants. Exhibit D-3 also states that the Claimant was home-schooled for most of his life, but graduated from [REDACTED]. Mr. Workman testified that the Claimant was not found substantially deficient in capacity for independent living because his only program-eligible ABAS-II score was in the sub-component of community use. He received ineligible ABAS-II scores in the sub-components of home living, socialization, leisure, and health and safety.

Additional narrative information contained in Exhibit D-3 concerning the functional area of self-care indicates that the Claimant can dress himself, use the restroom unassisted, use a fork to eat solid foods, cuts meat, combines hot and cold water for a bath, washes his hair, bathes daily, and gets out of bed unassisted. In regard to self-direction, the Claimant can work on a home activity for at least 15 minutes, sometimes keeps spending money in

a safe place, works independently and only asks for help when necessary, goes out alone during the day, avoids situations that are likely to result in trouble, and completes routine household tasks within a reasonable amount of time. Narrative information states that the Claimant routinely arrives at places on time, controls disappointment when a favorite activity is cancelled, saves money to purchase special items, returns to places on time, and completes large home projects on time. In regard to capacity for independent living, the Claimant can use a washer and dryer, sometimes operates a microwave oven, makes simple meals, cleans up spills, washes dishes and cleans house. He sometimes says “thank you” when given a gift, has one or more friends, and laughs in response to funny comments or jokes. He selects activities of interest, orders his own meals when dining in a restaurant, finds a restroom in public places, can use a payphone, and calls a doctor or hospital when ill or hurt. The Claimant can swallow liquid medicines, shows caution around hot or dangerous items, uses electrical outlets safely, follows general safety rules, and buckles his seatbelt in a car. In addition, the Claimant is mobile and exhibits receptive/expressive language skills. He has no employment history and receives disability benefits.

Exhibit D-3 lists an Axis I diagnosis for the Claimant of Schizoaffective Disorder, Mood Disorder-NOS, Post-Traumatic Stress Disorder and a history of alcohol dependence. While the Claimant has an Axis II diagnosis of Mild Intellectual Disability, Mr. Workman indicated that the Claimant’s deficiencies in major life areas must be related to an intellectual disability to qualify for the I/DD Waiver Program, as opposed to mental illness.

- 3) The Claimant’s representatives indicated that he previously qualified for the I/DD Waiver Program, but has been a patient at ██████████ Hospital for the past six years. They indicated that the Claimant lost Waiver services as the result of his extended stay at the facility, and should not be released to live independently. They contended that the Claimant is substantially deficient in self-care, self-direction and the sub-component of socialization under the functional area of capacity for independent living.

██████████, the Claimant’s aunt, testified that the Claimant only graduated from high school because the school awarded him a diploma based solely on his attendance. She stated that the Claimant was previously diagnosed with autism (see Exhibit C-1), has suffered a head injury, and has had several failed attempts at living independently. It should be noted that Exhibit C-1 was not submitted to the Department for review in conjunction with the Claimant’s I/DD Waiver application. Ms. ██████████ stated that the Claimant has difficulty dressing himself and must wear clothing – such as slip-on shoes – that is easily placed on his body. Ms. ██████████ testified that the Claimant does not cook, would eat raw hamburger if left to prepare his own meals, and does not watch for traffic when in public. She stated that the Claimant has a short attention span, could not operate a stove safely, and has had aggression issues, having torn up and “leveled” a previous residence.

██████████, Registered Nurse at ██████████ Hospital, testified that the Claimant could not dress himself properly without supervision and does not get along

well with others during group activities. She stated that the Claimant stays in bed the majority of the time and has a history of self-harm.

██████████, Social Worker at the hospital, provided information for the Independent Psychological Evaluation and stated that she filled out the form based on what the Claimant does in the hospital setting. She testified that some of the information was based on speculation concerning what the Claimant may be able to do outside of the hospital.

██████████, M.D., a physician at ██████████ Hospital, testified that the Claimant requires constant supervision to maintain his hygiene, care and nutrition.

APPLICABLE POLICY

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.

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.

DISCUSSION

In order to establish medical eligibility for participation in the I/DD Waiver Medicaid Program, an individual must meet the diagnostic, functionality and need for active treatment criteria. 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. While the Claimant has a potentially-eligible diagnosis for the I/DD Waiver Program, documentation provided for review does not support the presence of substantial deficits in three (3) of the six (6) major life areas. The Claimant is mobile and received ineligible ABAS-II scores in communication (receptive and expressive language), self-care and self-direction, and in all but one (1) sub-component of capacity for independent living. Narrative documentation submitted for review did not support his program-eligible score of two (2) in functional academics (learning). Therefore, medical eligibility for the I/DD Waiver Program has not been established.

CONCLUSIONS OF LAW

Evidence submitted at the hearing demonstrates that the Claimant does not meet the medical eligibility criteria required for participation in the I/DD Waiver Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's benefits through the Title XIX I/DD Waiver Medicaid Program.

ENTERED this 27th Day of February 2015.

**Pamela L. Hinzman
State Hearing Officer**