



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
State Capitol Complex Building, 6, Room. 817-B  
Charleston, WV 25305

Bob Wise  
Governor

Paul L. Nusbaum  
Secretary

January 10, 2005

\_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your son \_\_\_\_\_'s hearing held January 21, 2004. Your Hearing request was based on the Department of Health and Human Resources' action to deny your son's MR/DD Waiver Program application.

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 and benefit levels for the MR/DD Home and Community-Based Waiver Program are determined based on current regulations. One of these regulations specifies that in order to be eligible for the Title XIX MR/DD Home & Community-Based Waiver Program, an individual must have both a diagnosis of mental retardation and/or a related condition(s), and 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 Title XIX MR/DD Waiver Home & Community-Based Policy Manual, Chapter 1, Section I)

The information which was submitted at the hearing revealed that your son has a diagnosis of Autism, which is a qualifying diagnosis however he does not require the level of care provided in an ICF/MR Facility.

It is the decision of the State Hearing Officer to uphold the action of the Department in the action to deny your application for the MR/DD Waiver Program.

Sincerely,

Erika Young  
State Hearing Officer  
Member, State Board of Review

cc: Susan Hall, BBHMF  
Board of Review

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_\_ for \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_, \_\_\_\_\_

### **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 10, 2005 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 January 21, 2004 on a timely appeal filed August 25, 2003.

It should be noted here that the claimant's application for the MR/DD Waiver Program has been denied.

All persons giving testimony were placed under oath.

#### **II. PROGRAM PURPOSE**

The program entitled MR/DD Home and Community-Based Waiver is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The *Medicaid Home and Community-Based MR/DD Waiver* (authorized under Title XIX, Section 1915(c) of the Social Security Act) provides an alternative to services available in Intermediate Care Facilities for individuals with Mental Retardation or related conditions (ICF/MR). The primary purpose of an ICF/MR facility is to provide health and rehabilitative services. An ICF/MR facility provides services to persons who are in need of and who are receiving active treatment.

West Virginia's MR/DD Waiver Program provides for individuals who require an ICF/MR level of care, and who are otherwise eligible for participation in the program, to receive certain services in a home and/or community-based setting for the purpose of attaining independence, personal growth,

and community inclusion.

### **III. PARTICIPANTS**

\_\_\_\_\_, Claimants' Mother, by phone

Susan Hall, MR/DD Waiver Program Manager, by phone

Rick Workman, Psychologist Consultant, Bureau for Medical Services, by phone

Presiding at the hearing was Erika Young, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTION(S) TO BE DECIDED**

The question to be decided is whether it has been established that the claimant meets the medical eligibility criteria for the MR/DD Waiver Program

### **V. APPLICABLE POLICY**

Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 1, Section I

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

Departments' Exhibits:

- D-1 Notice of denial dated June 26, 2003
- D-2 DD-2A, Annual Medical Evaluation dated 3/12/03
- D-3 DD-3, Psychological Evaluation dated 02/28/03
- D-4 Psychological Evaluation dated 11/05/03
- D-5 Speech/Language Assessment Report dated 1/14/04
- D-6 Social History dated 02/28/03
- D-7 Individualized Education Program

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant in this case is \_\_\_\_\_ who, at the time of this hearing, was a 7-year-old male residing with his mother, and attending school in a regular classroom 77% of the time and 23% in Special Education classes.
2. The claimant has a diagnosis of Autistic Disorder, which is a qualifying diagnosis for the MR/DD waiver program.

### VII. ( Continued)

3. The Department completed an evaluation in June 2003 to determine if the claimant would be eligible for the MR/DD program. A decision was made that the claimant's Autistic condition does not require the level of care provided in an ICF/MR facility and that he does not have Substantial deficits in three or more major life areas. The Department sent a notice of denial to Mrs. \_\_\_\_\_ on June 26, 2003.
4. An Annual Medical Evaluation completed on March 12, 2003 identifies an attention span problem, a need for close supervision and a need for help with personal hygiene. This evaluation also indicates that the claimant is alert, ambulatory, continent, and feeds himself. The physician evaluator certifies that the patient requires the level of care provided in an ICF/MR facility.
5. A Psychological Evaluation completed by a Licensed Social Worker (Supervised Psychologist) and a Licensed Psychologist dated February 28, 2003 produced the following results:

Psychomotor - Both fine and gross motor skills appear to be adequate for his needs.  
Self Help - Feeds self using silverware, drinks from glass or cup, undress himself but requires assistance dressing, toilet trained since age 2 ½.

Language - Mostly non-verbal, special education does not include speech therapy  
Social Interaction/use of time - TV, video tapes, computer games, and turning pages of books without reading, avoids others.

Intellectual/Cognitive score from Peabody Picture Vocabulary Test shows a Standard Score of 76 with Age Equivalent of 5-9. The 76 is accepted as an IQ equivalent.

An Adaptive Behavior Scale test was administered by a Qualified Mental Retardation Professional, using Mental Retardation Norms. These scores were later converted using Non Mental Retardation Norms to reach the Standard Scores below:

Independent Functioning

Physical Development	9
Economic Activity	6
Language Development	4
Numbers & Time	8
Pre/vocational Activity	6
Self-Direction	5
Responsibility	7
Socialization	3

Note: The MR/DD program requires scores of less than 1 in these areas.

This Evaluation also includes a diagnosis Axis II - Borderline Intellectual Functioning which indicates no Mental Retardation.

#### **VII. (Continued)**

6. A Psychological Evaluation which was completed after the date of the Hearing Request was submitted as (Exhibit D-4). This Evaluation was done on November 5, 2003 by a Licenced Social Worker with Psychologist supervising. The results of a Stanford-Binet Intelligence Scale are as follows:

Verbal Reasoning Area	76
Abstract/Visual Reasoning Area	76
Quantitative Reasoning Area	96
Short Term Memory Area	91
Partial Test Composite	(82) low average range of intelligence

A Psycho-Educational Profile test was given and the results are as follows:

##### **Developmental Scale**

Imitation	- failed 1 out of 16
Perception	- failed 0 out of 13
Fine Motor	- failed 0 out of 16
Gross Motor	- failed 0 out of 18
Eye-Hand	- failed 1 out of 15
Cognitive Performance	- failed 2 out of 26
Cognitive Verbal	- failed 6 out of 27

##### **Behavioral Scale**

Relating and Affect	- failed 0 out of 12
Play & Interest	- failed 0 out of 8
Sensory Responses	- failed 0 out of 12
Language	- failed 0 out of 11

Based on a questionnaire completed by The claimant's mother, (Below 1) Vineland Adaptive Behavior scores were assigned to the areas of, Communication, Daily Living, Socialization, Motor Skills, Adaptive Behavior and Maladaptive Domain.

The Department's evaluators did not believe these scores (<1%) correlated to the

other information and scores which were submitted for review.

The Psychological Evaluator, while not indicating a need for services offered in an ICF/MR facility, states that: "Consideration should be given to utilizing these results to help the parent access support if Tyler meets the qualifications for Waiver Eligibility."

7. A Speech and Language Assessment report dated January 14, 2004 indicates an Articulation Percentile score of 18 which is not within the range needed for MR/DD eligibility. Some scores in the area of Language were Low, while most were in the Average range.
8. A Social History report dated February 28, 2003 indicates good leisure skills which would fall in the area of Self Direction. It also reports good functioning skills such as eating, drinking from a glass, undressing and toileting.

## VII. (Continued)

9. An Individualized Education Program report dated September 12, 2002, indicated that at age six, \_\_\_\_\_'s Visual Motor Integration Tasks were at an age of 5.2 years. It also reports improved activities of daily living skills.
10. Ms. \_\_\_\_\_ voiced her concerns that her son does still need help dressing and with some of his grooming. She states that he does fairly well with most tasks. She testified that he has communication troubles and some delays in learning abilities. She states he does do well with his fine motor skills, but has a poor attention span and some behavioral problems.
11. Eligibility Criteria for the MR/DD Waiver Program are outlined in Chapter 1 of the Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual. The level of care criteria for medical eligibility are listed at Section I within this chapter and read as follows:
  - A. In order to be eligible for the Title XIX MR/DD Home & Community-Based Waiver Program an individual must have both a diagnosis of mental retardation and/or a related conditions(s), and 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).  
[An Intermediate Care Facility is defined as one that provides services in an institutional setting for persons with mental retardation or related conditions.

The primary purpose of the institution is to provide services to individuals who are in need of and who are receiving active treatment.]

- B. The following list includes some examples of **related conditions**.

**This list does not represent all related conditions.**

1. Autism or Pervasive Developmental Disability, NOS
2. Spina Bifida
3. Cerebral Palsy
4. Tuberous Sclerosis
5. Traumatic Brain injury and/or Spinal Cord injuries (occurring during the developmental period).

- C. The evaluations must demonstrate that an individual has a diagnosis of mental retardation and/or a related condition which constitute a severe chronic disability which is:

**VII. (Continued):**

1. Attributable to a mental or physical disability or a combination of both;
2. Manifested before a person reaches twenty-two (22) years of age;
3. Likely to continue indefinitely; **and**
4. **Substantially** limits functioning in **three or more** of the following areas of major life activities:
  - a. Self-Care
  - b. Learning (functional academics)
  - c. Mobility
  - d. Capacity for Independent Living (home living, social skills, health and safety, community use, leisure)
  - e. Receptive and /or expressive Language
  - f. Self-Direction
  - g. Economic Self-sufficiency (Employment)

- D. Level of care determinations are made by the Office of Behavioral Health Services (OBHS) and the Bureau for Medical Services (BMS) based on the medical, psychological and social evaluations (DD-2A, DD-3, and DD-4)

- E. Evaluations must demonstrate the need for an ICF/MR level of care and services. This is demonstrated by the individual's need for intensive instruction, services, safety, assistance and supervision to learn new skills and increase independence in activities of daily living. The level of care and services needed must be the same level which is provided in an ICF/MR facility.

## **VIII. DECISION**

It is clear that the claimant does have a qualifying diagnosis for the MR/DD Waiver Program. However evidence and testimony support the position of the Department, that he does not have substantial limitations in three (3) or more of the major life areas. This claimant does not require the same level of care and services that is offered in an ICF/MR facility.

### **Section VIII. Continued:**

It is the finding of the Hearing Officer that sufficient evidence was presented to show that the claimant does not meet the eligibility criteria for the MR/DD waiver program. It is the decision of the State Hearing Officer to uphold the action of the Department to deny the claimant's application for the MR/DD Waiver Program.

## **IX. RIGHT OF APPEAL**

See Attachment.

## **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.