



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
January 21, 2005

Joe Manchin III  
Governor

\_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 14, 2004. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the MR/DD Home and Community-Based 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 Medicaid, MR/DD Home and Community-Based Waiver Services Program is based on current policy and regulations. Policy states 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). (MR/DD Waiver Policy Manual § 503.1)

The information which was submitted at your hearing reveals that specific criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program was not met.

It is the decision of the State Hearing Officer to **uphold** the action of the Department of Health and Human Resources to deny your application for the MR/DD Home & Community Based Waiver Services Program as set forth in the April 26, 2004 notification.

Sincerely,

Ron Anglin  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Susan Hall, Operations Coordinator, MR/DD, Office of Behavioral Health Services  
[REDACTED] Case Manager, [REDACTED] Health Services

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
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 12, 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 held October 14, 2004 on a timely appeal filed May 21, 2004. It should be noted here that services have been denied. All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled **Medicaid, Title XIX MR/DD Waiver, Home and Community Based Services**, is a federal/state funded program that provides health care coverage to low-income and medically needy West Virginians. West Virginia's MR/DD Waiver Program was implemented in March 1984 as approved by the federal Health Care Financing Administration (HCFA). The program serves individuals with mental retardation and related conditions (ICF/MR). The Waiver Program provides services in homes and local communities instead of ICF's/MR. The MR/DD Waiver Program is not an entitlement program. The program is a health care coverage program that reimburses for services to instruct/train, support and assist individuals who have mental retardation and/or related conditions to achieve the highest level of independence and self-sufficiency possible in their lives. The services provided under the MR/DD Waiver Program are: Services Coordination, Extended Physician services (Annual Medical Evaluation), Day Habilitation including QMRP (specialist) services, Prevocational Training, Supported Employment, Residential Habilitation, Transportation and Respite Care.

**III. PARTICIPANTS:**

\_\_\_\_\_, claimant

\_\_\_\_\_, claimant's mother

\_\_\_\_\_ CM, \_\_\_\_\_ Health Services

Cecelia Brown, Program manager, MR/DD Waiver, OBHS

Linda Workman, Psychological Consultant, OBHS

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

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the claimant meets the required medical criteria necessary to establish eligibility for the MR/DD Waiver Program?

**V. APPLICABLE POLICY:**

Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Manual, Chapter1.

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

E-1- DD-2A, Medical Evaluation, 3/10/04  
E-2- Psychological Evaluation, 2/23/04  
E-3- Social History, 2/23/04  
E-4- IPP, 4/2/04  
E-5- Addendum to 2/23/04 Psy, 6/11/04  
E-6- Eligibility Criteria, 1-1 thru 1-7  
E-7- MR/DD application package, 12/3/02  
C-1- Neuropsychological Evaluation 8/2 & 8/12/04  
C-2- [REDACTED] Co Sch.—Func. Behavioral Assess, 5/04 – 1/04, IEP, 11/19/04, Functional Analysis, 11/18-19/04.  
C-3- Psychiatric Evaluation, 12/1/04  
C-4- IEP, [REDACTED] Co Sch, 11/21/03

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

- (1) Notifications were sent to the claimant April 12 and April 27, 2004 advising that eligibility for the MR/DD Program could not be established. Claimant requested a hearing May 21, 2004. A hearing convened October 14, 2004.
- (2) During the hearing, exhibits E-1 thru E-7 and C-1 & C-4 were presented. As agreed during the hearing, the record was left open 30 days (extended at claimant's request to December 20) to enable the claimant to submit additional documentation. Exhibits C-2 was received November 29, 2004 and C-3 was received December 9, 2004. Both exhibits were shared with agency and agency's position not changed.
- (3) Cecelia Brown provided information pertaining to the application process and program eligibility policy.
- (4) Linda Workman pointed out from E-1 that the only assistance noted is with personal care and close supervision. No recommendations made for therapy. Diagnostic- Mild MR, IQ 60 and ADHD, seizure disorder, asthma. Prognosis- guarded. Recommends ICF/MR. From E-2- (2/23/04) - this was an update of an earlier exam. IQ's 63, 66. Notes he can sit stand and ambulate without support. Independent in eating and self care with some prompting with bathing and clothing. Can use phone. Good use of money. Can make needs known. IQ 58 like other scores mild MR range. ABS scores noted are non MR which requires scores below the first percentile. Psychologist notes "somewhat delayed" in most areas of adaptive behavior. Substantial delays are required for the program. Social history (E-3) contains no recommendation of ICF/MR. Can function in most areas with minimal or no assistance. Only 12% of day spent in SE. E-5 shows ABS scores (MR- norms) agency looking for scores 12 and below. Argues that claimant does not meet criteria in: Mobility- he is fully mobile, Language- has good receptive and expressive verbal skills. Learning- has some reading skills and is in regular classes most of the time, Self Care- is independent in most areas- feeding phone use etc., Self Direction- is active and enjoys various activities. Economic self sufficiency- is not applicable at this point. Capacity for Independent Living- may present a problem, has some social skill deficits but can use community and leisure activities. Concedes claimant's MR qualifies as an eligible diagnosis.
- (5) \_\_\_\_\_ testified that she feels her son meets some criteria. Was told that son's reading level was \_\_\_\_\_ on a 3- 4th grade level and he is in 6<sup>th</sup> grade.
- (6) Exhibit E-1, Annual Medical Exam of 3/10/04 reveals claimant is ambulatory, continent and feeds himself. He needs assistance with personal hygiene and needs close supervision in the area of mental and behavioral considerations. ICF/MR care is recommended.
- (7) Exhibit E-2, Psychological Evaluation of 2/23/04 reveals that the claimant exhibits no psychomotor problems. He can eat properly with utensils and order food. Independent at toileting, personal hygiene and dressing. Some prompting with bathing and clothing care. Is safety conscious. Has money skills and

understands time concepts. Language skills are basic. Reads simple stories and writes whole sentences. Is polite and sociable. Full range of effect and oriented to time, person and place. IQ 58 mild MR.

- (8) Exhibit E-5, Addendum to 2/23/04 Psychological- this report utilizes Non- MR norms. Scores in Part One Domain are all average or above with the exception of- Prevocational/Vocational, Socialization. Scores in the "Two Domain" range from very poor to below average.
- (9) Exhibit C-1, Neuropsychological Evaluation of 8/2/04- 8/18/04 suggests low average to borderline intellectual functioning. Academic difficulties exacerbated by behavioral issues. Demonstrates substantial evidence of cognitive attention and concentration difficulties. Symptoms related to ADHD.
- (10) Exhibit C-3, Psychiatric Evaluation of 12/1/04 provides the following diagnoses: Pervasive Developmental Disorder NOS, ADHD combined type, Mild MR.

## VIII. CONCLUSIONS OF LAW:

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 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:
  - 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)

## IX. DECISION:

Policy states that in order to be eligible for the MR/DD 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 ICF/MR facility. The evaluations must demonstrate that the mental retardation and/or related condition constitute a severe chronic disability. The severe chronic disability is attributable to a mental or physical disability or a combination of both, has to have manifested prior to the age of 22, is likely to continue indefinitely, AND substantially limits functioning in three or more of the seven specified major life activities.

Based on evidence submitted during the hearing, the claimant's diagnosis of MR is a qualifying condition. The agency acknowledges that the claimant's diagnosis constitutes an "eligible diagnosis".

Assessing "substantial limitation" in the 7 specified areas of major life activities: Evidence offered concerning ***Mobility, Receptive and Expressive Language, Self-Care, Learning, Self-Direction*** and ***Capacity for Independent Living*** fails to support a finding that delays are substantial or chronic/severe in nature. In short, evidence is insufficient to demonstrate that the claimant's delays in any of these 6 categories rise to the level of qualifying or the level of care or services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded).

Evidence reveals the claimant is totally independent in ambulation. He is substantially independent in personal care-bathing, dressing, eating, toileting etc. with minimal prompting. His language skills appear basic but adequate. He is able to read fundamental material and seems to understand directives and safety issues. He is enrolled in regular classroom work the majority of the time and possesses reading and writing skills. He is able to use a telephone and can manage money. He is active in terms of self-direction and based on all the skills noted above seems to have the necessary and appropriate abilities for future independent living. The claimant's potential for future Economic Self-Sufficiency, in terms of employment, is questionable and may constitute an area of life activity beyond the capability of the claimant. I find reasonable, suggestions that deficits noted may in fact be amplified by behavioral issues in particular ADHD.

It is the decision of the State Hearing Officer to **uphold** the action of the Department of Health and Human Resources to deny the claimant's application for the Medicaid MR/DD Home and Community Based Waiver Services Program as set forth in the April 26, 2004 notification. I find that evidence offered failed to establish the existence or potential of substantial limitations in functioning in at least 3 of the 7 specified areas of "Major Life Activities".

## X. RIGHT OF APPEAL

See Attachment.

## XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29

