



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

Joe Manchin III
Governor

January 24, 2005

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 2004. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for the MR/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 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 you do 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 their action to deny services under the MR/DD Waiver Program.

Sincerely,

Erika Young
State Hearing Officer
Member, State Board of Review

cc: [REDACTED]
Susan Hall, BBHMF
Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

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 24, 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 May 2, 2004 on a timely appeal filed February 4, 2004.

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

_____, Claimant
_____, Claimant's Mother
_____, County Sheltered Workshop
_____, County Sheltered Workshop
_____, Case Manager, _____
_____, County Opportunity Center
Cecilia Brown, MR/DD Waiver Program Manager, by phone
Richard Workman, Psychologist Consultant, Bureau for Medical Services, by phone
Observing: Kelly Ambrose, 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:

- 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.]

V. (Continued)

- 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. Tuberos 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)
- 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.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments' Exhibits:

- D-1 Notice of denial dated January 5, 2004
- D-2 Notice of denial dated February 23, 2004
- D-3 DD-2A, Annual Medical Evaluation dated November 12, 2003

VI. (Continued)

- D-4 Letter from _____ dated May 3, 2004
- D-5 Letter from _____ dated January 20, 2004
- D-6 DD-3, Psychological Evaluation dated September 19, 2003
- D-7 Adaptive Behavior Scale Scores dated November 17, 2003

- D-8 Social History dated November 3, 2003
D-9 Individual Program Plan

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant in this case is _____ who, at the time of this hearing, was a 50-year-old female who was living alone in an apartment complex that has available 24-hour supervision. In November 2003, _____ submitted an MR/DD Waiver application packet to the Department. Among the documents included with the packet were a psychological evaluation dated September 19, 2003, a Social History, a medical evaluation, and an Individual Program Plan.

2. On February 4, 2004, the Department issued a notice of denial to the claimant citing as the reason for denial:

Information submitted for review indicates that Ms. _____ [sic] cognitive and adaptive deficits are very mild in comparison to those individuals who typically require an ICF/MR level of care. Documentation submitted indicates that she presently lives semi-independently in the community and has since May of 2003 without benefit of an ICF/MR level of care.

3. The Social History provided historical information indicating that there had been some delays in the claimant's development and that at 8 years and 5 months of age she was tested and diagnosed as having intellectual functioning in the mild mental retardation range. It indicates that the claimant had lived with her parents until May 2003 when her mother could no longer care for her. At that time she moved to a semi-independent apartment complex where it was reported that the claimant required more supervision than initially believed. The Social History indicates that the claimant was able to dress, feed toilet and bathe herself but needed assistance in cooking, keeping her apartment clean, laundry, making and keeping doctor appointments, taking medications, and financial responsibilities. It is reported that the claimant enjoyed playing bingo and attending activities with the church and was going on outings with peers and staff. It is reported that the claimant had a hysterectomy in 2000 due to uterine cancer.

VII. (Continued)

4. The September 19, 2003 psychological evaluation reports a diagnosis of Mild Mental Retardation with an IQ of 68. Scores on a WRAT-R test have been recorded as: Reading - 64 - Mild M.R. range, Spelling - 53 - Low M.R. range, and Arithmetic - 69 - Mild M. R. range. Scores on the Kaufman Brief Intelligence Test have been recorded as: Vocabulary - 76- Borderline (outside M.R. range), Confidence Interval - 68 - Upper Level of M.R. range,

and Composite IQ - 68 - Upper Level of M.R. range. Included in this Psychological were results of a Vineland Adaptive Behavior Scale which is based on an interview with Tracy Staley who is the Case Manager from Healthways. The resulting scores were all in the below 1% percentile rank.

5. The September psychological evaluation reports prior testing and shows that on an achievement test (WRAT-R) in 1998, the claimant scored 64 in reading, 53 in spelling and 69 in arithmetic.
6. The September 2003 psychological evaluation reports that the claimant ambulated unassisted, had never held a job and never lived independently, that she understood what money was used for but needed assistance in managing her finances. It was reported that the claimant could read at the elementary school level, that she needed assistance to take her medications and could not cook unsupervised due to the possibility of her starting a fire or having an accident. It was reported that the claimant spoke clearly enough to be understood and could express basic needs and wants as well as frustrations.
7. The medical evaluation - Form DD-2A - indicates that the claimant had no problems requiring special care in the areas of mobility, continence, feeding, personal hygiene or mental and behavior difficulties. The diagnosis of mild mental retardation was given, and it was reported that the claimant had had ovarian and uterine cancer.
8. Department psychologist consultant Richard Workman testified that, upon reviewing the application packet, the Department determined that the Vineland scores included in the psychological evaluation were not compatible with the level of functioning that the claimant was exhibiting by virtue of her spending several hours every day alone. On January 5, 2004, the Department requested additional information in the form of an ABS-RC:2 and additional information regarding the amount of time the claimant was spending alone in her apartment. Mr. Workman testified that the Department did not receive information to show how much time the claimant was spending alone in her apartment but that the Department had calculated from the information submitted that, at the most, the claimant was receiving 14 hours per day of services leaving ten hours per day when the claimant was alone.

VII. (Continued)

9. An ABS-RC:2 (AAMR Adaptive Behavior Scale - Residential and Community Second Edition) had been completed on November 17, 2003 and the results were sent to the Department. On this instrument, the claimant scored in the average range in the areas of independent functioning, economic activity, domestic activity, and prevocational/vocational activity; in the above-average range in physical development, language development, self-direction, responsibility, and socialization; and in the superior range in numbers and time.
10. A letter dated May 3, 2004 by [REDACTED] of the [REDACTED] County Workshop reports

a deterioration in the claimant's vocational and social skills in the previous three years. Ms. [REDACTED] reported that the claimant is probably capable of performing duties but she refuses to try without direct supervision and constant reinforcement.

11. Mr. Workman testified that the documentation showed that the claimant was currently functioning at a level higher than that typically found in an ICF/MR facility and that the indications are that her functional level had deteriorated recently possibly due to the death of her father and her cancer treatment. He pointed out that in order to be eligible for the MR/DD Waiver Program it must be shown that the applicant had substantial limitations in three or more areas of major life activity in the developmental period – i.e. – prior to age 22.
12. A letter dated January 20, 2004 by [REDACTED] Residential Program Supervisor, indicates that the claimant needs help with meal preparation, medicating, and handling finances. She also reports that management staff provides transportation to all of the claimant's appointments and social activities. She states that the claimant has basic housekeeping skills but needs consistent supervision to complete those tasks. She reports that even personal hygiene sometimes requires staff intervention.
13. Adaptive Behavior Scale scores of November 17, 2003, as reported on Exhibit D-7, show the following factor scores:

Personal Self-Sufficiency - Percentile Rank - 97 (Superior)
Community Self Sufficiency - Percentile Rank - 68 (Average)
Personal Social Responsibility - Percentile Rank - 68 (Average)
Social Adjustment - Percentile Rank - 42 (Average)
Personal Adjustment - Percentile Rank - 58 (Average)

Domain Scores were also listed as Average to Superior. These included areas of:

Independent Functioning – Average
Physical Development – Above Average

VII. (Continued)

Economic Activity - Average
Language Development – Above Average
Numbers and Time - Superior
Domestic Activity – Average
Prevocational/Vocational Activity - Average
Self-Direction - Above Average
Responsibility – Above Average
Socialization – Above Average

14. The claimant's Social History, Exhibit D-8, completed November 3, 2003, reports that Ms.

_____ enjoys Bingo, activities with her church, shopping and trying computer games. It reports that she can feed, dress, undress, toilet, bathe all independently, but does need help with cooking, house cleaning, laundry, medicating and with financial responsibilities.

15. The claimant's Individual Program Plan, completed October 2, 2003, indicates the skills needing improvement are in the areas of shopping, cooking, computer, exercise, telephone, money and comparison shopping. None of the Major Life areas were mentioned.
16. Witnesses from the Sheltered Work Shop and from Overbrook Towers, where _____ resides, did offer testimony that the claimant does need direct supervision while at work and that supervision is available at the apartment complex 24 hours per day. It was reported that the claimant is checked on throughout the day and is assisted with meal preparation and housekeeping. Testimony indicates that the claimant knows how to come down to their office if she needs them. They voiced concerns of the claimant's safety out in the community due to her being naive about persons who might try to take advantage of her. They voiced concerns about her vacating the building independently in an emergency, when the stairs had to be used. Due to her weight and lack of stamina she would need help.
17. The claimant's Mother testified that _____ has never gotten over the death of her Father and fears the death of her Mother. She voiced concerns that _____ could never live on her own, and that the staff at _____ takes care of transportation, doctor appointments, and finances.

VIII. DECISION

The claimant does have a diagnosis of mental retardation but testing has shown her to be in the upper range of mild mental retardation. The scores on the ABS-RC:2 show that the claimant was in the average range (in comparison with other persons with mental retardation) in the areas of independent functioning, economic activity, domestic activity, and prevocational/vocational activity. These scores would indicate that the claimant may have significant limitations in the areas of capacity for independent living and economic self-sufficiency. The evidence does not support a finding of substantial limitations in the other five areas of major life activity. It is the finding of the State Hearing Officer that the claimant did not meet the medical eligibility criteria for the MR/DD Waiver Program. The Department's action to deny the claimant's application for that program is upheld.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.