



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 2590
Fairmont, WV 26555

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 11, 2005

_____ for

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to deny your daughter's application for benefits and services through the MR/DD Home & Community-Based Waiver Services 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 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). (West Virginia Title XIX MR/DD Waiver Home & Community-Based Services Policy Manual)

Information submitted at the hearing reveals that your daughter does not have an eligible diagnosis to meet criteria for the Title XIX MR/DD Home & Community-Based Waiver Services Program.

It is the decision of the State Hearing Officer to uphold the Department's proposal to deny benefits under the MR/DD Home & Community-Based Waiver Services Program.

Sincerely,

Erika H. Young
State Hearing Officer
Member, State Board of Review

cc: Susan Hall, Coordinator, MR/DD Waiver Program
Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

NAME _____ for _____

ADDRESS: _____

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 11, 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 convened on March 8, 2004 on a timely appeal filed November 20, 2003.

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/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's mother

Susan Hall, MR/DD Waiver Program Coordinator, BMS, participating telephonically

Linda Workman, Psychologist Consultant, BMS, participating telephonically

Presiding at the hearing was Erika H. Young, 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:

West Virginia Title XIX MR/DD Waiver Home & Community-Based Services Handbook

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Exhibit 1	Individualized Education Program dated February 5, 2004
Exhibit 2	WVDHHR Individual Program Plan dated August 13, 2003
Exhibit 3	[REDACTED] Rehabilitation Center Treatment Plan
Exhibit 4	Occupational Therapy Report dated January 31, 2003
Exhibit 5	[REDACTED] County Schools Education Specialist Report
Exhibit 6	[REDACTED] Rehabilitation Center Speech-Language Evaluation Report dated October 30, 2002
Exhibit 7	[REDACTED] County Schools Initial Evaluation dated January 31, 2003
Exhibit 8	[REDACTED] Clinic Report dated October 3, 2002
Exhibit 9	Letters from Dr. [REDACTED]
Exhibit 10	Advanced Psychological Services Evaluation dated February 11, 2004
Exhibit 11	[REDACTED] Wellness Center and Creative Counseling Services Psychiatric Evaluation
Exhibit 12	[REDACTED] Hospital Speech and Language Initial Evaluation dated November 28, 2003
Exhibit 13	Boehm.3 test results
Exhibit 14	Notice of MR/DD Waiver Program denial dated October 31, 2003
Exhibit 15	Annual Medical Evaluation dated August 19, 2003
Exhibit 16	Psychological Evaluation dated August 13, 2003
Exhibit 17	[REDACTED] Services, Inc. Social History dated September 26, 2003

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Claimant received a Notice of Denial dated October 31, 2003 (Exhibit 14) which reads:

Your Waiver Application is hereby denied. . . Your application was denied because: Neither the physician nor psychologist provides an eligible diagnosis for an ICF/MR level of care. Also, the documentation reflects low

VII. (Continued)

average intellectual scores and adaptive behavior results that reflect ineligible scores. There is no IEP and M[s]. _____ would not require an ICF/MR level of care and it was not recommended by neither the psychologist nor the social worker [sic].

2. Referring to the Annual Medical Evaluation dated August 19, 2003 (Exhibit 15), Ms. Workman stated no physical problems were noted for the claimant, but a very short attention span and vision problems were described under the neurological segment. The claimant is ambulatory, continent, feeds herself and is alert. The report reveals the claimant requires assistance with personal hygiene and displays irrational behavior. The physician recommends occupational therapy and cites a diagnosis of Reactive Attachment Disorder, Fetal Alcohol Syndrome and failure to thrive. The prognosis is listed as fair.
3. The Psychological Evaluation dated August 13, 2003 (Exhibit 16) indicates the claimant is six years old. She was born at 35 weeks addicted to crack cocaine and was adopted after having been removed from her biological parents' custody. The evaluation reveals no history of institutional or psychiatric hospitalization, but the claimant was hospitalized for approximately six weeks following her birth, and again in 2001 when a gastrointestinal tube was inserted into her stomach. The document indicates the claimant is a hyperactive child who exhibits motor restlessness and impulsivity. She throws temper tantrums, is moody, often has restless sleep and has a poor appetite. Motor and speech rates are adequate, but at times the rate is accelerated. While generally independent, the claimant does require assistance/prompting in most self-care tasks such as eating, dressing, toileting and bathing. She continues to utilize a gastrointestinal tube for feeding, but can eat solid foods regularly. Articulation is clear and typically relevant and coherent. The claimant received a composite score of 85 on the Stanford-Binet Intelligence Scale, which is considered in the low average range of ability. Adaptive Behavior Scales were administered and compared against other six-year-olds from the regular population. To meet MR/DD Program criteria, Ms. Workman testified that percentile ranks of less than 1 are required in comparison to the regular population and the claimant's scores were outside this range. The diagnosis is listed as Attention Deficit Hyperactivity Disorder.
4. A Social History dated September 26, 2003 (Exhibit 18) states the claimant was removed from her mother's custody at nine weeks of age. At the time of her removal, the claimant had been left in a crack house for three days by herself and had not been fed, changed or cared for during this time period. She weighed less than four pounds and was 14 inches long. The claimant is described as social and has many friends, but is prone to emotional outbursts.

VII. (Continued)

5. Upon review of the information, Ms. Workman testified that neither the physician nor the psychologist provide an eligible diagnosis for the MR/DD Waiver Program. Documentation reflects low average intellectual abilities and the claimant does not have substantial delays in three or more areas of adaptive functioning.
6. Ms. _____ testified that her daughter is currently in _____ Hospital as a result of a Bipolar 1 Disorder diagnosis. The claimant requires 10-to-12-hour feedings through her gastrointestinal tube. She currently weighs about 31 pounds and will soon turn seven years old. Ms. _____ said her daughter is a handicapped child and desperately needs Title XIX services. She referred to a psychological evaluation performed by Advanced Psychological Services and dated February 11, 2004 (Exhibit 10). Diagnoses include the following: Attention Deficit Hyperactivity Disorder, Reactive Attachment Disorder of Infancy or Early Childhood, Fetal Alcohol Syndrome and acid reflux. It was noted the Claimant has had an escalation of violent and aggressive behaviors within the home environment and is very disruptive within the classroom setting. Her score on the Global Assessment of Functioning Scale was 51 at the time of the assessment, but was 40 at the time of her admission to Fox Run, which indicates the claimant is having major problems in all areas of functioning, Ms. _____ said. The claimant is currently unable to attend school, is hyperactive and is becoming destructive/aggressive. Ms. Workman responded that mental illness diagnoses are excluded as eligible diagnoses for the MR/DD Waiver Program.

CONCLUSIONS OF LAW

1. MR/DD Policy Manual, Chapter 1 provides the following information concerning medical eligibility for the MR/DD Waiver Program:
 - I. Level of care Criteria for medical eligibility
 - 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).
 - B. The following list includes some examples of related conditions. This list does not represent all related conditions.

VII. Conclusions of Law (Continued)

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)
- 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.
- 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.

II. DECISION:

Testimony revealed that, while the Claimant faces many challenges, she does not have a diagnosis of either mental retardation or a related condition and therefore does not meet medical eligibility criteria as required for MR/DD Waiver Program eligibility. It is the decision of the State Hearing Officer to uphold the Department's proposal to deny the claimant benefits and services through the Medicaid, MR/DD Home and Community-Based Waiver Services Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29