



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**Joe Manchin III
Governor**

**Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, West Virginia 24901
Telephone (304) 647-7476 Fax: (304) 647-7486**

**Martha Yeager Walker
Secretary**

June 21, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 23, 2005 for the Title XIX MR/DD Home and Community Based Waiver Program. Your hearing request was based on the Department of Health and Human Resources' decision to deny services.

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 Title XIX MR/DD Home and Community Based Waiver Program is based on current policy and regulations. One of these regulations state as follows: The individual must have a diagnosis of mental retardation and/or 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) (Chapter 1, 1A of the Title XIX MR/DD Home & Community-Based Waiver Program Operations Manual)

The information which was submitted at your hearing revealed that your son does not meet the medical eligibility criteria for the Title XIX MR/DD Home and Community Based Waiver Program.

It is the decision of the State Hearing Officer to uphold the decision of the Agency to deny services under the Title XIX MR/DD Home and Community Based Waiver Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Steve Brady, BBHHF

Health Services

**WEST VIRGINIA DEPARTMENT OF HEALTH & 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 May 23, 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 23, 2005 on a timely appeal, filed July 14, 2004. It should be noted that this hearing was originally scheduled for December 15, 2005. The hearing was rescheduled at the claimant's request to March 4, 2005. It was then rescheduled a second time per the request of the claimant to May 23, 2005.

It should be noted here that the claimant's benefits have been denied.

II. PROGRAM PURPOSE:

The Program entitled MR/DD Home and Community-Based Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 and Representative

_____, Service Coordinator, _____ Health Services

_____, QMRP, _____ Health Services

Steve Brady, Acting Program Operations Coordinator, BBHFF

Linda Workman, Consulting Psychologist, BMS

(Mr. Brady and Ms. Workman participated by telephone)

Presiding at the hearing was Margaret M. Mann, State Hearing Officer, Member, State Board of Review.

IV. QUESTIONS 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

V. APPLICABLE POLICY:

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 is listed in Section I within this chapter and reads 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.

- NOS
1. Autism or Pervasive Developmental Disability,
 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 (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:

Department' Exhibits:

Exhibit D-1) Annual Medical Evaluation 04/14/04
 Exhibit D-2) Psychological Evaluation dated 01/20/04
 Exhibit D-3) Waiver Program initial Program History dated 05/05/04
 Exhibit D-4) Eligibility Criteria
 Exhibit D-5) Notification Letter dated 96/08/04
 Exhibit D-6) Information submitted in 2005 for reconsideration
 Exhibit D-7) IEP dated 04/26/04

Claimants' Exhibits

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Exhibit C-1) Annual Screening Summary dated 02/28/05
 Exhibit C-2) Letter dated 03/03/05 from [REDACTED]

VII. FINDINGS OF FACT:

- 1) The claimant in this case is_____, a male child four (4) years of age, who was denied services under the MR/DD Waiver Program in June, 2004.
- 2) The Department, on September 8, 2004, issued a notice of denial giving as the reason "The physician has not given an eligible diagnosis. The DD-3 is beyond 90 days and the psychologist has not given an eligible diagnosis. Data submitted do not support substantial adaptive deficits in three or more major life areas. The DD-5 does not support the need for active treatment as no habilitation goals are included. The packet lacks Mr. _____ IEP." (Exhibit D-5)

3) The medical evaluation notes no critical problems. Under neurological no problems are noted other than coherence "global developmental delays" _____ was three (3) years of age at the time of the evaluation. The report reads _____ is ambulatory, incontinent, needs assistance with personal hygiene, confused, disoriented, needs close supervision, and is unable to communicate. A recommendation for a special needs school is made. Needs psychological therapy for behavioral problems. The mental diagnoses are global developmental delays Prognosis: Will improve with therapy, and premature birth @ 34 weeks. An ICF Level of Care was certified. (Exhibit D-1)

4) A psychological evaluation was completed 01/20/04. It was not on the format typically used (DD-3). The Adaptive Behavior Scale was used in the document. The scores typically being looked for are 55 and below. _____ scored above 55 in all areas: 65 under communication; 62 under daily living; 67 under socialization; 63 under motor skills; and 59 under adaptive behavior components. Under

diagnosis: Axis I - Disorder of Infancy; Axis II: Deferred though Adaptive Behavior reflects significant development delays. Recommendations: Case management to assist in linkage and advocacy for additional services, including Title XIX Waiver, Family Support, and Intensive in-home behavior management training. (Exhibit D-2)

5) The social worker recommended _____ receive an ICF/MR level of care. (Exhibit D-3)

6) Ms. Workman testified they were unable were unable to approve he application based on the above information. 1) The physician had not offered an eligible

diagnosis; 2) the psychological was beyond the 90 day requirement and the psychologist did not offer a diagnosis; and the data submitted did not show substantial deficits in three or more major life areas. There also were not any active treatment noted in the habitation plan. There was also no IEP attached.

7) Additional information was reviewed in March, 2005. (Exhibit D-6) There was no new medical report so there was still no eligible diagnosis. The habilitation plan listed goals of flex and stretch extremities, self-care skills - brushing teeth, washing and drying hands, washing face, and dressing with pants. The goals did not seem out of the ordinary for a three-year old.

8) The psychological completed in 01/05 Autism was ruled out by a rating instrument. _____ scored in the average range on the WWIPPSI-III Intelligence Test. There were no eligible diagnoses and no recommendation for ICF/MR level of care (Exhibit D-6).

9) The IEP developed in 10/04 outlines the problems with side motor skills for which occupational therapy will be provided at school. At near age four, _____ is not potty trained. (Exhibit D-6)

10) Ms. Workman testified there was nothing in the additional information submitted that would overturn the original denial.

11) Ms. _____ had a letter from _____, She states she has observed developmental delays, speech delays and some behavioral issues. A screening has _____ at 36 months for personal/social and language. (Exhibits C-1 and C-2)

VIII. CONCLUSIONS OF LAW:

1) Policy 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).

2) The evaluations must demonstrate that an individual has a diagnosis of mental

retardation and/or a related condition, which constitutes a severe chronic disability which is attributable to a mental or physical disability or combination of both; manifested before a person reaches 22 years of age; likely to continue indefinitely, and substantially limits functioning in three or more of major life activities.

3) The documentation submitted does not support an eligible diagnosis for the MR/DD Program.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the medical eligibility criteria for the MR/DD Waiver Program. The Department is upheld in the decision to deny the claimant's application for the MR/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29