



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 10, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 29, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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 your hearing reveals that you do not meet the criteria to establish medical eligibility 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 terminate your benefits under the MR/DD Home & Community-Based Waiver Services Program.

Sincerely,

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

cc: [REDACTED]
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 _____

ADDRESS: _____

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 convened on January 29, 2004 on a timely appeal filed June 11, 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

_____, County Sheltered Workshop
_____, Assistant Supervisor, _____
_____, RN, _____
_____, Case Manager, _____
_____, QMRP, _____

Cecelia Brown, MR/DD Waiver Program Manager, 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 continues to meet 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:

Department's Exhibits

- D-1 Comprehensive Psychological Evaluation (Triennial) dated May 30, 2002
- D-2 Participant Status Monitoring Report dated June 10, 2002
- D-3 Annual Medical Evaluation (DD-2A) dated May 22, 2002
- D-4 Cost Estimate Worksheet dated June 10, 2002
- D-5 Annual Medical Evaluation (DD-2A) dated May 9, 2001
- D-6 Comprehensive Psychological Evaluation dated May 25, 1999
- D-7 Social history dated June 1, 1999
- D-8 Individual Program Plan dated May 27, 1999
- D-9 Individual Performance Evaluation Form dated December 1, 1998
- D-10 Cost Estimate Worksheet dated June 1, 1999
- D-11 MR/DD Waiver Program Screening Application dated March 16, 1999
- D-12 Annual Medical Evaluation (DD-2A) dated May 22, 2000
- D-13 Notice of denial dated December 30, 2002
- D-14 Comprehensive Psychological Evaluation (Triennial) dated June 20, 2003
- D-15 Social History Update dated June 12, 2003
- D-16 Individual Program Plan dated May 29, 2003
- D-17 Residential Habilitation Program Design Training Sheet
- D-18 Nursing assessment completed by [REDACTED] dated April 22, 2003

Claimant's Exhibits

- C-1 Letter from [REDACTED] dated January 20, 2004

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Claimant received a letter from the Bureau of Medical Services dated December 30, 2002 (D-13) which states the following: "Documentation provided for re-certification does not support continued medical eligibility for ICF/MR institutional level of care. Continued medical eligibility for ICF/MR level of care is denied for this re-certification."

VII. (Continued)

2. Ms. Workman testified that the Annual Medical Evaluation completed for the Claimant on May 22, 2002 (D-3) revealed a diagnosis of mild mental retardation with a stable prognosis. The document states the Claimant is ambulatory, continent, feeds himself, provides self-care for his personal hygiene and is alert. No additional therapies were recommended.
3. Referring to the Comprehensive Psychological Evaluation dated May 30, 2002 (D-1), Ms. Workman said the Claimant obtained a full scale IQ of 60, which is in the range of mild mental retardation. The evaluation notes the Claimant does not participate in any formal behavior modification program, but manifests a wide range of infantile behaviors. The Claimant is ambulatory and is able to perform a variety of self-help skills such as eating/drinking independently, caring for himself in the bathroom, exercising care of dress, preparing for bed, caring for his room and performing routine household tasks. Regarding language, the document states the Claimant is verbal, understandable, and clearly capable of expressing basic needs, wants and frustrations. The Claimant scored an IQ of 60 on the Slosson Intelligence Test, which is in the range of mild mental retardation, Ms. Workman said. The Claimant's scores on the Adaptive Behavior Scale were mainly in the top five percentile among individuals afflicted with mental retardation. His lowest score was a 75 percent in economic activity, which Ms. Workman stated is in the average range. His score in personal self-sufficiency was in the 99th percentile, very superior range, while his community self-sufficiency and personal-social responsibility scores were in the 92nd, superior range, and 96th percentile, superior range, respectively.
4. Ms. Workman referred to a nursing assessment (D-18) completed by Esther Snyder on April 22, 2003. The assessment indicates the Claimant graduated from [REDACTED] School and volunteers at the local fire department. The Claimant enjoys socializing with friends, has had numerous girlfriends and is assumed to be sexually active. He is independent in the community, has frequent vague complaints and seeks to avoid programming. The Claimant is ambulatory, has good community skills, is his own legal guardian, has a normal range of emotions and dines in restaurants.
5. Ms. Workman testified about the Comprehensive Psychological Evaluation completed on June 20, 2003 (D-14). The evaluation states the Claimant had resided in an independent apartment with staff oversight for the past year. Prior to that, he resided in a group home with 24-hour staffing and with his biological parents. The document states the Claimant acquired the skills needed to manage his current level of independence while residing in the group home. The Claimant's problem behaviors include lying and avoiding responsibility, and he was suspended from his laundry/contract work job at the [REDACTED] County Sheltered Workshop for missing work without calling, walking off the job and angry outbursts. The document states the Claimant will not clean his apartment without supervision, does not keep appointments and has a history of squandering his money in lieu of paying bills. The report reveals the Claimant is ambulatory and is independent in personal hygiene, but needs prompting to cook, eat nutritiously, attend supported employment, pay bills and clean his apartment. His speech is described as fairly clear although he has a tendency to slur words. Vineland Adaptive Behavior Scales reveal low adaptive scores of 27 in communication, 55 in daily living skills, 43 in socialization and 38 composite. Ms. Workman said these scores are very weak and "wildly different" from other evaluations that were submitted. She stated the scores seem highly

VII. (Continued)

inconsistent with the Claimant's level of functioning as described in psychological and nursing assessments.

6. A Social History Update (D-15) states the Claimant is extremely social, but behaves as an adolescent, instigating quarrels and confrontations with peers. He attends the Hancock County Sheltered Workshop where he completes laundry, janitorial and contract work. He requires eyes-on supervision and protective oversight, but is considered a good, steady worker. The update states the Claimant can eat, dress and toilet independently, but cannot manage money, tend to nutrition and health needs, or maintain a clean residence without intervention. Regarding recreational activities, the document states the Claimant enjoys socializing at the [REDACTED] Fire Department, riding his bicycle, watching videos and one-to-one staff outings.
7. Ms. Workman concluded that while the Claimant has an eligible diagnosis, but does not appear to have substantial deficits in three or more major life activities and does not meet eligibility criteria for re-certification in the MR/DD Waiver Program.
8. Ms. [REDACTED] testified about the nursing assessment (D-18) and pointed out the Claimant was diagnosed with gastroesophageal reflux disease. Ms. [REDACTED] said she reviewed nutritional information with the Claimant to assist him in managing the disease, however, the Claimant has taken none of those steps. She said the Claimant continues to gain weight, his apartment was filthy and she did not consider the apartment to be a safe, hygienic surrounding. She said the Claimant has since been moved into a more restrictive environment because he was failing at living independently.
9. Ms. [REDACTED] said the Claimant has recently been moved to [REDACTED] Apartments, which provides 24-hour supervision. She said the Claimant could not manage in an independent apartment and was moved for his own safety. Addressing the inconsistencies in adaptive behavior scores, Ms. [REDACTED] stated the Claimant can appear to individuals as "much higher functioning" than he actually is and has the capability to tell people what they want to hear to make them believe that his abilities are more well developed. She stated the Claimant has good months, but will backslide without supervision.
10. Ms. [REDACTED] testified that the Claimant needs the MR/DD Program and 24-hour supervision. She cited his problems with money management and purchasing appropriate grocery items in regard to his reflux disease. She believes he has deficits in self-care and capacity for independent living. The Claimant has moved backwards regarding his capacity to live independently, she stated, and she noted he was scared to stay in his old apartment alone.
11. Mr. [REDACTED] testified about the Claimant's work history with the [REDACTED] County Sheltered Workshop. He said the Claimant displays good work skills, but needs consistent monitoring because of the quality of his end product and to ensure that he does not wander away from the job. He said the Claimant shows poor judgment and poor decision-making ability, and that his daily exaggerations and fabrications have caused havoc. He said that, without monitoring, the Claimant would have poor work attendance. The Claimant's frustration tolerance is limited and he has difficulty accepting

VII. (Continued)

criticism from his supervisor, Mr. [REDACTED] said. In addition, the Claimant does not feel that rules apply to him and he functions best with a steady routine and calm work setting. Mr. [REDACTED] testified the Claimant's employment would have been terminated if the work was not with the Sheltered Workshop.

12. A letter from [REDACTED] Residential Program Supervisor at [REDACTED] indicates that the Claimant has been moved from an independent apartment to a semi-independent living setting to guarantee his safety and health. The letter states that the Claimant indulges in fast foods and does not follow the diet recommended for the treatment of his reflux disease. He needs much prompting and requires redirection by staff in social situations in order to display respect for others and speak in a kind manner, the letter said.

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.
 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 has many challenges, the preponderance of evidence shows that he does not meet Level of Care 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 terminate the Claimant's 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.