



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

Bob Wise
Governor

Paul L. Nusbaum
Secretary

June 12, 2005

c/o

Legal Aid of WV

[REDACTED]

Dear Mr. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 7, 2005. Your Hearing request was based on the Department of Health and Human Resources' action to deny you services under the Title XIX MR/DD Waiver 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 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

It is the decision of the State Hearing Officer to **REVERSE** the proposal/action of the Department to deny your application for the MR/DD Home & Community Based Waiver Services Program.

Sincerely,

Michael D. Payne
State Hearing Officer
Member, State Board of Review

cc: Susan Hall, Program Coordinator
Erika Young, 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 February 7, 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 originally convened on ____ on a timely appeal filed October 21, 2004.

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

_____, Psychiatrist

_____, Psychologist

_____, Representative for Claimant

Susan Hall, Program Operations Coordinator, BMS

Linda Workman, Psychologist Consultant, BMS

Presiding at the hearing was Michael D. Payne, 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 the claimant meets the required medical criteria necessary to establish eligibility 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.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits

- D-1 Notice of Denial dated October 5, 2004
- D-2 DD-2A, Annual Medical Evaluation dated February 22, 2004
- D-3 DD-3, Psychological Evaluation, dated May 26, 2004
- D-4 Social History dated April 26, 2004
- D-5 Individualized Habilitation Plan, dated June 18, 2004
- D-6 Individualized Education Plan, dated April 26, 2004
- D-7 Individualized Program Plan, dated February 23, 2004
- D-8 Individualized Program Plan, dated June 18, 2004
- D-9 Adaptive Behavior Scale-School Summary Report, dated May 26, 2004

Claimant's Exhibits

- C-1 Curriculum Vitae for _____ M.D.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. On the 5th day of October, 2004 notification was sent to the claimant advising him that his application to the MR/DD Program was denied- "Documentation submitted for review does not support the presence of substantial adaptive deficits in three or more of the seven major life areas identified for Waiver eligibility which are applicable to Mr. ____'s status as a minor child which requires active treatment."
2. ____ has been diagnosed with Autism, which is a "related condition" for eligibility purposes within the MR/DD Waiver Program.
3. ____'s condition has manifested itself prior to the age of twenty-two years.
4. With regards to "Self-Care" the evidence has shown that while ____ is clearly limited in his ability to take care of himself, he is not "substantially" limited as he can care for himself with prompting and assistance.
5. With regards to "Learning" the evidence has shown that ____, while clearly limited to a degree, is able to attend classes with a mentor and take tests which have been tailored to fit his abilities. As a result, ____ is not significantly limited in this area.
6. ____ is not substantially limited in "Mobility".
7. It has been stipulated that ____ is substantially limited in the area of "Capacity for Independent Living."
8. The evidence has shown that ____ has an inability to properly comprehend expressive language. He has shown an inability to perceive when he is being ridiculed or picked on by his peers. He likewise has an inability to convey expressive language. His speech has been documented as mechanical and without emotion. He also has no concept of differentiating between those to whom he should have close relationships with and those who are strangers. As a result, ____ is significantly limited in the area of "Receptive and/or Expressive Language."
9. The evidence has shown that ____ does have significant "Self-Direction." While the attainability of these goals is dubious, he nevertheless has expressed his desire to attend

college and become an engineer.

10. There has been zero evidence which would convince this hearing examiner that ____ could ever become economically self-sufficient. As a result ____ is substantially limited in the area of “Economic Self-Sufficiency.”
11. The evidence has shown that ____’s conditions are likely to continue indefinitely.

Conclusions of Law

1. 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 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.**

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 (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.

VIII. DECISION

It is the opinion of this hearing examiner that ____ meets the eligibility criteria for the MR/DD Waiver Program. First, ____ has been diagnosed with Autism which has been diagnosed as a condition related to mental retardation. Second, ____ has shown that he requires the level of care and services provided in an Intermediate Care Facility for Individuals with Mental Retardation and /or related conditions (ICF/MR Facility). ____'s mental condition, which has manifested itself prior to the age of Twenty-two, demonstrates substantial limitations in the areas of "Capacity for Independent Living", "Receptive or Expressive Language", and "Economic Self-Sufficiency". ____'s condition is likely to continue indefinitely.

As a result, It is the decision of this State Hearing Officer to **REVERSE** the Department of Health and Human Resources' action to deny your application for 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.

Form IG-BR-29.