



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

January 28, 2005

_____ for

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 21, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your son's benefits and services through the MR/DD Home and 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)

The information submitted at your hearing reveals that your son does not meet the required Level of Care criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program.

Therefore, it is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your son's benefits under the MR/DD Home & Community-Based Waiver Services Program.

Sincerely,

Pamela L. Hinzman
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 28, 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 21, 2005 on a timely appeal filed November 22, 2004.

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

_____, Claimant's father

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

Richard Workman, Psychologist Consultant, BMS, participating telephonically

Presiding at the hearing was Pamela L. Hinzman, 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:

- D-1 Notice of MR/DD Waiver Program service termination dated October 29, 2004
- D-2 WVDHHR Psychological Evaluation dated August 2, 2004, completed by Dr. [REDACTED]
- D-3 Psychological Evaluation dated December 7, 2004, completed by [REDACTED] M.S.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Claimant underwent an annual psychological evaluation. Following a review of the evaluation, the Claimant received a letter from the Bureau of Medical Services dated October 29, 2004 (D-1) which states the following:

Your Waiver services have been terminated. Your application was terminated because: Continued participation is not recommended by the evaluating psychologist, who believes that Mr. _____ no longer requires an ICF/MR level of care.
2. Mr. Workman testified that he had reviewed the Claimant's case when the Claimant was originally approved for MR/DD services several years ago. At that time, Mr. Workman had noted that the Claimant was "minimally eligible" and his case would be reviewed annually to determine continued eligibility.
3. Mr. Workman testified that the Claimant has an eligible diagnosis of mental retardation and a substantial adaptive deficit in the area of economic self-sufficiency. He stated the Claimant does not, however, have substantial delays in the areas of self-care, learning, mobility, capacity for independent living, receptive and expressive language, and self-direction.
3. The WVDHHR Psychological Evaluation (D-2) completed by [REDACTED] addresses the Claimant's behavioral history. It notes the Claimant, who is 29 years old and resides in his parents' basement in an apartment-type setting, had a history of pouting, cussing and acting out. These behaviors were said to have occurred when the Claimant's intentions were not understood, but the report indicates the Claimant is now able to express his areas of concern. In the past, the Claimant had some difficulty with social judgment, but the report states that this behavior has ceased as well. The Claimant enjoys swimming, shopping and playing basketball, and he told the psychologist that he does not wish to continue day habilitation (active treatment). The Claimant is developing budgeting skills and learning measurements. Other than his finances, he takes care of most of his personal needs, which Mr. Workman said does not indicate a substantial delay. The Claimant indicated he would like to live on his own, which Mr. Workman said reveals self-direction and growth.

The report indicates no current evidence of physical and/or sensory deficits, but cites mild psychomotor retardation. Mr. Workman said those considered as having deficits for the MR/DD Waiver Program normally do not have mobility. The report states the Claimant provides his own self-care, with the exception of budgeting and finances. He exhibits no speech or language difficulties, and his speech is fluent and relatively easy to discern. He is alert, oriented and coherent. The Claimant shows a fairly good comprehension of everyday social situations and events, is socially engaging and utilizes his time fairly effectively with minimal direction. His leisure activities involve spending time with his girlfriend and attending church, which Mr. Workman said is indicative of self-direction.

According to Mr. Workman, those considered for the MR/DD Waiver Program normally have Kaufman Brief Intelligence Test scores of 55 and below with consistent adaptive behavior. The Claimant's reported scores were: vocabulary, 73; matrices, 68; and composite, 67. Mr. Workman said individuals at the upper limit of mental retardation attain IQ scores of 69 or 70. He said the Claimant is at the very upper limit and within the mild range. The Claimant's reading, spelling and arithmetic skills are at the third-grade level equivalent, which is in the mild range. The Claimant's vocabulary skills reveal a borderline range of intellect. He possesses fundamental academic skills and can spell four and five- letter words, and is capable of performing simple arithmetic operations of addition, subtraction and multiplication.

Regarding adaptive behavior, the report states the Claimant has made good progress in regard to personal and social functioning. He is able to provide personal care for himself, but has difficulty managing finances. His social interactions with others are appropriate. In reviewing the Adaptive Behavior Scale, ABS-RC-2, the Claimant had no significant scores below average with the exception of social adjustment. He was regarded as mostly above average in his development, and superior with regard to physical development and socialization skills. His overall adaptive skills are considered average or above for his respective peer group. The Claimant told the evaluator that he wished to live independently from his parents.

The only area associated with the need for active treatment was the Claimant's ability to be employed at a productive wage level without systematic long-term supervision or support.

Under the developmental findings/conclusions segment of the evaluation, the psychologist stated:

_____ has been attending day habilitation treatment programming for the past six years now. It is believed that he has maximized his potential within this program... In conclusion, this examiner does not believe that _____ continues to require intensive waiver services involving 24 hour a day supervision and the learning of new functional skills.

The psychologist concluded that the Claimant is not appropriate for a 24-hour ICF/MR Level of Care based on his current level of functioning.

4. Mr. Workman reviewed a psychological evaluation (D-3), submitted by the Claimant's family, which had been completed by _____ M.S., a licensed psychologist, on December 8, 2004. The report states the Claimant has mild mental retardation, which Mr. Workman said is inconsistent with a severe level of delay. The report states the Claimant, who was diagnosed with Down's Syndrome, is a healthy, fully developed physically fit male. He attended school in _____ County as a special education student and completed high school. He has a small apartment-like living situation in his parents' basement with his own television, microwave oven and small refrigerator. He sleeps in this area, makes his own bed and straightens the room. He is able to prepare snack food in the microwave and keep drinks in the refrigerator, however, he does not cook his own meals.

The report indicates the Claimant has made progress in _____ programs and some of his social behavioral problems, such as inappropriate sexual/affectionate behaviors, have diminished or ceased. He has made gains in becoming more responsible in completing tasks. The Claimant takes care of his bathing

needs and fully dresses himself. He can write a check with assistance, and go to the store and pick out food. He enjoys being with people, attends church regularly, likes to wrestle with his cousin, enjoys working out at the fitness center, plays games on a computer and can put on his own music.

Mr. Workman testified that the evaluation did not include the typical standard intellectual scores to review, but stated the WAIS-III placed the Claimant in the mildly retarded range. The report did list a WRAT standard score of 62, which Mr. Workman said also falls in the mild range.

The evaluator states, in part:

_____ has made progress towards being more independent and gaining more skills. He has reduced some of the behavior problems he has had in the past. He continues to need assistance in some of his self-care, supervision in his finances and self direction and is substantially impaired in his learning/academic functioning.

The report adds that the Claimant's "progress and good level of functioning seem to be a direct result of the services he receives and the support and supervision he receives at home. It is recommended that his Waiver services be continued." Mr. Workman reiterated, however, that evidence does not support the need for continued Waiver services.

5. Mrs. _____ questioned the validity of the psychological evaluation completed by United Summit Center. She stated that many of the statements were the Claimant's opinion, and testified that nothing her son says or does can be considered dependable. She stated that, only in the past year, has her son been able to be left home alone for more than one hour, and he must be called and checked on when alone. She said everything that her son does must be closely supervised, and that he cannot even be trusted to cross a street alone. She said his self-care must be encouraged and all of his appointments are made for him as he would be unable to do so. His bed-making skills entail pulling up a comforter. Mrs. _____ said it was noted on the report that _____ did not wish to continue services, but she stated he loves to participate in the services. In addition, _____ stated on the report that he likes to spend time with his girlfriend, however, Mrs. _____ stated that he has no girlfriend so his statements cannot be considered reliable. She said _____ has helped _____ tremendously, but goals may not be set high enough and those goals should include the development of more in-depth skills.
6. Mr. _____ testified that _____ is physically capable of pushing a lawn mower, but cannot be trusted with it. He said _____ tells others that he can do things that he actually cannot do. He also stated that expressive language is a problem for _____ and that his son becomes frustrated because he cannot express himself. The _____s testified that, in their opinion, _____ has substantial deficits in the areas of capacity for independent living, self-care, economic self-sufficiency, expressive language, learning and self-direction.

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.

VIII. DECISION:

Testimony revealed that, while the Claimant faces many challenges related to his condition, he does not exhibit deficits in three or more major life activities as required for MR/DD Waiver Program eligibility. Because it was not shown by a preponderance of evidence that the Claimant would require the intensive degree of care and services provided at an ICF/MR facility, 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.

IG-BR-29