



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin  
Governor

Martha Yeager Walker  
Secretary

June 1, 2005

\_\_\_\_\_  
By \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held May 13, 2005. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for MR/DD Waiver Program benefits.

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). The condition must be severe and chronic, in conjunction with substantial deficits 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-I).

The information, which was submitted, at this hearing, revealed that your son does have a qualifying diagnosis for the MR/DD Waiver Program however; his condition does not require the level of care provided in an ICF/MR Facility. It is the decision of the State Hearing Officer to **uphold** the action of the Department in their denial of services under the MR/DD Waiver Program.

Sincerely,

Sharon Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Susan Hall, BBHHF  
Rick Workman, BBHHF  
Chairman, BOR

[REDACTED]

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_\_ by \_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: \_\_\_\_\_**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**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 13, 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 13, 2005 on a timely appeal filed September 20, 2004.

It should be noted here that the claimant's application for the MR/DD Waiver Program has been denied.

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's witnesses:

\_\_\_\_\_, Claimant's mother

\_\_\_\_\_, Claimant's father

\_\_\_\_\_, School Psychologist

\_\_\_\_\_, Special Education Teacher

\_\_\_\_\_, Case Manager

\_\_\_\_\_, Psychologist

Department's witnesses:

Susan Hall, MR/DD Waiver Program Manager

Rick Workman, Psychologist Consultant, Bureau for Medical Services

\_\_\_\_\_, Claimant's council

Kelly Ambrose, Department's council

Presiding at the hearing was Sharon Yoho, 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 it has been established that the claimant meets the medical eligibility criteria for the MR/DD Waiver Program

### **V. APPLICABLE POLICY**

Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 1-I.

## **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

Departments' Exhibits:

- D-1 MR/DD Medical Eligibility Criteria, Chapter 500
- D-1a MR/DD Eligibility Criteria, Chapter 1 section I.
- D-2 Notice of denial dated July 13, 2004
- D-3 Comprehensive Psychological Evaluation dated April 15, 2004
- D-4 Psychological Evaluation dated May 27, 2004
- D-5 Psychological Evaluation-Addendum dated September 29, 2004
- D-6 Psychological Evaluation dated October 21, 2004
- D-7 Annual Medical Evaluation dated May 20, 2004
- D-8 Social History dated June 9, 2004
- D-9 Occupational Therapy Report dated March 12, 2004
- D-10 Individualized Education Program report dated march 23, 2004

## **VII. FINDINGS OF FACT:**

1. \_\_\_\_\_ is a 7-year-old male who, resides with his family. At the time of the MR/DD application, he was 6 years old. He has diagnoses of Down's Syndrome. He attends public school where he receives 87 percent of his instruction in a regular classroom setting. He is reported to be performing in the mid- range of his class. He is in his second year of Kindergarten and is to be promoted to first grade in the fall. He has a reported composite IQ of 70 to 75. A diagnosis of Mild Mental Retardation was reported on the following evaluations: Comprehensive Psychological (D-3), Psychological Evaluation-Addendum (D-5), Psychological Evaluation (D-6), Annual Medical Evaluation (D-7) and Psychological Evaluation (D-4). Scores in the Moderate Mental Retardation was reported on Psychological Evaluation (D-4) with a notation made by the evaluator that hearing, irritability and distractibility may have affected performance. The claimant was suffering with symptoms of an ear infection the day of the evaluation.
2. Adaptive Behavior scores reported on the Psychological Evaluation of April 15, 2004 produced results in the average to low average range in categories of Self-Care Skills, Communication, Social Skills, Academic Skills and Occupational Skills. The Psychological Evaluation performed on May 27, 2004 reported lower scores however; these results were reported to possibly be affected by symptoms of an ear infection. These scores on average still were not in the severe range. A Self Sufficiency factor score of 112 was in the above average range. The Psychological Addendum (D-5) in reference to the May 27, 2004 Stanford Binet results recommended retesting once the patient's hearing was assessed. The Psychological Evaluation subsequently performed on October 21, 2004 reported Adaptive Behavior scores using MR-norms. The results produced a percentage score of 50 percent in the areas of Independent Functioning and in Pre/Vocational Activity. All other scores were



above the 50 percentile range. This Evaluation also reported Adaptive Behavior scores using non MR-norms. These results indicated no percentage scores below 2 percent. The evaluator noted under current behaviors:

- Psychomotor
  - motor movement average to accelerated
  - rate of speech average
  - fine and gross motor to be impaired for some tasks
- Self Help
  - eats independently after food is cut up
  - dresses self with assistance with snaps, buttons, zippers and shoes
  - baths and toilets with some assistance
- Language
  - verbal communication mostly understood
  - some difficulty with comprehension

This evaluator continues with a conflicting assessment of severe deficits in Self-Care, Self-Direction, Capacity for independent living and Economic Self sufficiency.

3. An annual medical evaluation of May 20, 2004 reports that assistance is needed with personal hygiene but that he was ambulatory, continent, self-feeding and alert. This evaluating physician notes that the patient has mild developmental delays and that his prognosis is good.
4. Testimony given by school psychologist, [REDACTED], indicates that \_\_\_\_\_ is mildly mentally impaired with his greatest deficit being in physical strength. She reports that he needs close supervision and assistance during lunchtime and toileting. She indicates that he has abilities that he is often reluctant to use. He has a school aide who is with him during the entire school day.
5. Mr. \_\_\_\_\_ had not seen the claimant, but interpreted test results. He indicated that the claimant suffers from mild and not moderate mental retardation. His opinion is that the claimant has a chronic condition and that he meets the criteria for the MR/DD waiver program.
6. Ms. \_\_\_\_\_ sees \_\_\_\_\_ three times a week in his regular classroom. She is a special education teacher. She confirms that he has difficulty with taking care of such things as opening doors, pulling up and zipping pants and cutting up food. She states that he is slow and unsteady while ambulating at school. She notes that his Individual Education Program reports that he can express his wants and desires. He responds to directions and answers questions using partial sentences. Due to a lack of strength, he must use a weighted pencil.
7. \_\_\_\_\_, mother, reports that he can wash himself, but does not always do a good job. He needs reminded to go to the bathroom or he will wet his pants. She has to cut up his food and monitor him closely to ensure that he does not choke while eating. She states that \_\_\_\_\_ needs much supervision at home as well as at school.

## VIII. CONCLUSIONS OF LAW:

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.
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.

## **IX. DECISION:**

The claimant does have a qualifying diagnosis for the MR/DD Waiver program however; his condition does not exhibit substantial deficits in (3) or more of the major life areas. The claimant has a diagnosis of Down's Syndrome however; a combined consensus was derived from this hearing that the claimant only suffers from Mild Mental Retardation and delays. He does receive his education instruction in a regular classroom in the public school system and he has a composite I.Q. score of 75. The majority of his difficulties are associated with his physical weakness and frailty. This weakness affects his fine and gross motor skills as well. There was not sufficient testimony or evidence offered to counter the findings of the Department in their decision to deny benefits under the MR/DD waiver program. This claimant's limitations were not severe enough to require the level of care offered in an ICF/MR institutional facility.

It is the finding of the Hearing Officer that [REDACTED] did not meet the medical eligibility criteria for the MR/DD waiver program for the application, which was processed in July 2004. It is the ruling of this hearing officer that the action to deny these benefits was justified and such action is **upheld.**



**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 1st Day of June, 2005**

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**State Hearing Officer**

