



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

May 11, 2005

Dear Ms ____:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held April 18, 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), 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 500-8).

The information which was submitted at the hearing revealed that your son does have a qualifying diagnosis for the MR/DD Waiver Program, however he 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, BBHMF
Linda Workman, BBHMF
Chairman, BOR

**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 April 18, 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 April 18, 2004 on a timely appeal filed December 23, 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

(2)

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
_____, School Advocate
Susan Hall, MR/DD Waiver Program Manager
Linda Workman, Psychologist Consultant, Bureau for Medical Services

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 500-8.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments' Exhibits:

- D-1 MRDD Medical Eligibility Criteria, Chapter 500-8
- D-2 Notice of Denial dated November 8, 2004
- D-3 Annual Medical Evaluation dated June 22, 2004
- D-4 Social History dated August 31, 2004
- D-5 Psychological Evaluation dated September 3, 2004

(3)

- D-6 Adaptive Behavior Scale – School results dated September 3, 2004
- D-7 Individual Program Plan dated September 21, 2004

D-8 Individualized Education Program Dated December 3, 2003

Claimants' Exhibits:

C-1 Letter from [REDACTED] School Psychologist

VII. FINDINGS OF FACT:

1. ____ is a 9-year-old male who, resides in a home with his Mother, Father and older brother. He attends public school with 50% of his classroom instruction being provided in Special Education Classes.
 2. ____ has an Axis II. diagnoses of Mild Mental Retardation and Pervasive Developmental Disorder. He has an Axis I. Diagnosis of Attention Deficit/Hyperactivity Disorder.
 3. His annual medical evaluation of June 22, 2004 reports no problems requiring special care in the areas of ambulation, continence or feeding. It indicated that he needs some assistance with personal hygiene and that he needs close supervision due to mental and behavioral difficulties. The physician indicates that the patient requires the level of care and services provided in an ICF/MR intermediate care facility.
 4. A comprehensive psychological evaluation was completed on September 3, 2004. The evaluation reported ____ to be fully mobile and able to complete most self-care tasks without assistance, but that he does need some assistance with tooth brushing, bathing and tying shoelaces. It does report that he requires constant supervision to ensure his safety. He can read simple stories and can do a little writing. The report identifies that ____ enjoys playing card games, watching TV and riding his bike. He prefers to be alone and doesn't show interest in the affairs of others.
 5. The psychological evaluation reported results from the Kaufman Brief Intelligence Test. The scores from this test were reported to be similar to that of an individual with mild mental retardation. His Adaptive Behavior Scale scores were compared to Non-Mentally Retarded Norms and did not report scores in the less than 1% range. His socialization score was listed as 1%. All other scores which would relate to his functioning in major life areas were above 1%. His most recent IQ test was administered in the year 2001 and it reported a Full Scale IQ of 78, a verbal score of 79 and a performance IQ of 82. The results of all three of the above tests do support his diagnosis of mild mental retardation, but do not indicate substantial limited functioning.
- (4)
6. Ms. ____ voiced her concerns that the public school system may not be administering the repetitive training which she feels ____ needs. She has noticed some regression in his ability

to remember previous taught skills such as the alphabet.

7. Ms. [REDACTED] testified that the goals in the school system for ____ remain at a pre-primary level which is very low for some one of ____'s age. She reports that he can do basic addition and subtraction, but does not understand regrouping. There has been some progress with time, but no progress with money.
8. ____'s mother states that ____ can wash his hands and face but needs prompting. He does his toileting alone, but sometimes there is some left on his pants. She says he can dress himself, but doesn't always dress appropriately. He does his own teeth brushing and bathing, but needs some help in order to get it right.
9. School Psychologist, [REDACTED] wrote a letter to clarify that ____ does qualify for special education due to his diagnosis of mild mental retardation. She identifies that he has adaptive skills that are substantially below the average.
10. Ms. Workman testified that after review of the documents, a decision was reached that ____ did have a qualifying diagnosis for the MR/DD program, but the documentation did not support the belief that he had the presence of substantial deficits in three or more of the seven Major Life Activities which include:
 - a. Self-Care
 - b. Learning (functional academics)
 - c. Mobility
 - d. Capacity for Independent Living
 - e. Language
 - f. Self-Direction

VIII. CONCLUSIONS OF LAW:

1. Eligibility Criteria for the MR/DD Waiver Program are outlined in Chapter 500 of the Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual. The level of care criteria for medical eligibility is outlined in this chapter and reads as follows:

Diagnosis

- Must have a diagnosis of mental retardation, which must be severe and/or chronic, in conjunction with substantial deficits (substantial limitations associated with the presence of mental retardation), and or
(5)
- Must have a related developmental condition, which constitutes a severe, chronic disability with concurrent substantial deficits.

Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the MR/DD Waiver Program include, but are not limited to, the following:

- Any condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons
- Autism
- Traumatic brain injury
- Cerebral Palsy
- Spina Bifida
- Tuberous Sclerosis
- Additionally, mental retardation and/or related conditions with associated concurrent adaptive deficits:
 - Were manifested prior to the age of 22, and
 - Are likely to continue indefinitely

Functionality

- Substantially limited functioning in three or more of the following major life areas: (Substantial limits is defined on standardized measures of adaptive behavior scores three (3) standard deviations below the mean or less than 1 percentile when derived from non MR normative populations or in the average range or equal to or below the seventy fifth (75) percentile when derived from MR normative populations. The presence of substantial deficits must be supported by the documentation submitted for review, i.e., the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)
 - Self-care
 - Receptive or expressive language (communication)
 - Learning (functional academics)
 - Mobility
 - Self-direction
 - Capacity for independent living (home living, social skills, employment, health and safety, community use, leisure).

Active Treatment

- Requires and would benefit from continuous active treatment.

Medical Eligibility Criteria: Level of Care

- To qualify for ICF/MR level of care, evaluations of the applicant must demonstrate:
 - A need for intensive instruction, services, assistance, and supervision in order to learn new skills and increase independence in activities daily living.
 - A need for the same level of care and services that is provided in an ICF/MR institutional setting.

IX. DECISION:

It is clear that the claimant does have a qualifying diagnosis of Mental Retardation, however the degree of his mental retardation is in the mild range. Policy is clear that a diagnosis of mental retardation must be in the severe and chronic range and be in conjunction with substantial deficits. Evidence and testimony support the decision of the Department, that the claimant did not at the time of application have substantial limited functioning in three (3) or more of the major life areas.

The documentation shows that ____ does have delays with the most severe being in his socialization skills. The delays that he experiences are 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 sufficient evidence was presented to show that ____ did not meet medical eligibility criteria for the MR/DD waiver program for the application which was processed in November 2004. It is the ruling of this hearing officer that the proposed action to deny these benefits was justified and such action is **upheld**

X. RIGHT OF APPEAL:

See Attachment.

(7)

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 11th Day of May, 2005

State Hearing Officer