



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 13, 2005

____ for

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 24, 2005. 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 and Community-Based Waiver 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 Medicaid 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 Policy Manual)

Information submitted at the hearing reveals that your daughter no longer has an eligible diagnosis of Mental Retardation and she has not been diagnosed with a program qualifying "related condition." Additionally, your daughter does not meet the required ICF/MR facility "Level of Care" criteria required to establish eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services through the Medicaid, MR/DD Home and Community Based Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Susan Hall, MR/DD Program Coordinator

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 April 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 scheduled for and convened on March 24, 2005 on a timely appeal filed December 16, 2004.

It should be noted that benefits are continuing pending the results of the hearing.

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's/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 / representative
Susan Hall, MR/DD Program Operations Coordinator, OBHS
Linda Workman, Psychological Consultant, BMS
Presiding at the hearing was Thomas Arnett, 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 has a program qualifying related condition and meets 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
The Federal Code of Regulation - 42 CFR 435.1009(a),2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's exhibits

- D-1 Notice of Denial dated 10/14/04.
- D-2 Psychological Evaluation – Triennial dated 2/2/04.
- D-3 MR/DD Waiver Assessment (DD-1) dated 6/4/04.
- D-4 Individualized Education Plan (IEP) dated 5/18/04.

Claimant's exhibits

- C-1 Psychological Evaluation - Updated dated 2/1/05.

VII. FINDINGS OF FACTS:

1. The Claimant was undergoing an annual reevaluation to establish continued eligibility for participation in the MR/DD Waiver Program when the Department notified the Claimant that her benefits and services were going to be terminated. The Notice of Denial (D-1), dated October 14, 2004, states in pertinent part:

Your Waiver services have been terminated.

Your application was terminated because:

Documents submitted for recertification review indicate that Miss ____ neither has an eligible diagnosis nor manifests substantial deficits related to mental retardation or a related condition in three of the seven major life areas identified for Title XIX MR/DD Waiver eligibility.

2. The Department submitted exhibits identified as D-1 through D-4 in support of their finding that the Claimant fails to meet the eligibility criteria for the MR/DD Waiver Program. The DD-1, exhibit D-3, was submitted for recertification but some of the information included in this document alerted evaluators that additional information was needed to establish continued eligibility. The Department contends that the additional documents received confirmed that the Claimant is no longer eligible for benefits and services through the MR/DD Waiver Program.
3. The Department cited the findings in Exhibit D-2, Psychological Evaluation dated 2/2/04, and C-1, Psychological Evaluation dated 2/1/05 – (update) submitted by the Claimant during the hearing, and noted that both documents fail to include a diagnosis of Mental Retardation or a related condition. The Claimant's IQ - verbal 95, Performance 86 and Full Scale IQ of 90, is in the average range of intelligence, and there is no evidence to suggest that the Claimant's congenital malformation is related to the presence of Mental Retardation. The Adaptive Behavior results and the narrative information included in both evaluations fail to demonstrate substantial deficits in three or more of the major life activities as the Claimant is independent in Mobility, she has age appropriate Self-Care skills, her Language skills have improved and she can make her wants and needs known. The Claimant's Self-direction skills are well developed as she pursues activities of leisure and entertainment and there is no evidence to suggest at this point that she has substantial deficits in her Capacity for Independent Living or Economic Self-Sufficiency.

4. The Department reviewed the Claimant's IEP (D-4) and noted that it recommends Speech and Occupational Therapy. The IEP indicates that the Claimant's speech intelligibility is at 100% and her speech quality is age appropriate with a limited number of phoneme substitutions that are inconsistent. The Claimant is reported to be in regular education 98% of the time and there are no academic (Learning) deficits addressed in this IEP.
5. ____ testified that her daughter was initially diagnosed with Mental Retardation by an evaluation completed by _____. She stated that her daughter went directly from the Birth-to-three program into the MR/DD Waiver Program approximately 3-years ago. Ms. ____ acknowledged that her daughter is not Mentally Retarded but she indicated that she does have developmental delays. She believes that the physical disabilities have not been fully taken into consideration and that she needs this program for continued progress.

VIII. CONCLUSIONS OF LAW:

1. The MR/DD Policy Manual, Chapter 1, I.A., 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). Based on the evidence submitted, the Claimant does not have a diagnosis of Mental Retardation.
2. The Federal Code of Regulations, found at § 42 CFR 435.1009, provides that persons with related conditions means individuals who have a severe, chronic disability that is attributable to Cerebral palsy or epilepsy; or any other 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, and requires treatment or services similar to those required for these persons. There is no evidence to indicate that the Claimant's congenital malformation is a program qualifying "related condition."
3. Policy found in Chapter 1, I.C.4, provides that the evaluations must demonstrate substantially limited functioning in three or more of the following major life activities: Self-Care, Learning (functional academics), Mobility, Capacity for Independent Living (home living, social skills, health and safety, community use, leisure), Receptive and/or expressive Language, Self-Direction and Economic Self-sufficiency (Employment). The evidence submitted fails to establish substantial deficits in any of the major life activities.
4. The evidence submitted fails to demonstrate that the Claimant has a diagnosis of Mental Retardation and/or a program qualifying related condition, and she does not require the level of care and services required by individuals with Mental Retardation or related conditions in an Intermediate Care Facility (ICF/MR).

IX. DECISION:

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.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

IG-BR-29