



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
April 25, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 16, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the Medicaid, 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). (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 information which was submitted at your hearing reveals that specific criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program was not met.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department of Health and Human Resources to terminate benefits under the MR/DD Home & Community Based Waiver Services Program as set forth in the November 29, 2004 notification.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Susan Hall, Operations Coordinator, MR/DD, Office of Behavioral Health Services

**WEST VIRGINIA DEPARTMENT OF HEALTH AND 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 25, 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 held March 16, 2005 on a timely appeal filed December 9, 2004. It should be noted here that benefits and services have continued. 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: (all by phone)

_____, claimant

_____, CM, United Summit Center

_____ Community Support Worker

Susan Hall, Program Coordinator, MR/DD Waiver, OBHS

Richard Workman, Psychological Consultant, OBHS

Presiding at the hearing was Ron Anglin, 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 meets the required medical criteria necessary to establish eligibility for the MR/DD Waiver Program?

V. APPLICABLE POLICY:

Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Manual, Chapter 1&4.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- Letter from _____ dated 11/5/04

E-2- Notification dated 11/29/04

E-3- Psychological Evaluation, 7/15/04

E-4- Psychological Evaluation, 2/7/05- received from UHC 2/24/05 and Faxed to OBHS.
Addendum to this evaluation received 3/16/05- ABS results.

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

(1) Hearing request received by the State Hearing Officer December 20, 2004 based on notification of termination dated November 29, 2004. January 11, 2005, the OBHS was contacted and a hearing date of March 16, 2005 granted at which time the hearing was convened.

(2) During the hearing, exhibits as noted in section VI above were submitted

(3) Susan Hall provided information pertaining to the program eligibility. Cited Chapter 4 page 34- noting that eligibility must include a recommendation that the individual requires an ICF/MR level of care based on a need for habilitation services. On 11/9/04, a letter (E-1) was received from the CSM that based on test results the claimant did not meet MR/DD criteria. Consulted with psychological consultant and termination sent 11/29/04

(4) Richard Workman testified that documentation does not support a need for active treatment nor substantial deficits in 3 of 7 major life areas or MR and there is no recommendation for ICF/MR level of care or 24 hour supervision. From E-3 (Psychological Evaluation of 7/15/04) notes that there was no recommendation of the need for ICF/MR level of care at the 6/19/03 evaluation. This was previously missed by the bureau. Report notes independent ambulation, independent self care, lives independently, good language skills, alert and oriented, displays self- direction in that he enjoys social activities- bowling, computers video games etc. IQ score of 80 is in lower range of normal. ABS scores are all above the 12 standard. Part One Factor scores are very high. Notes from recommendation that Title XIX criteria not met. E-4 (Psychological Evaluation of 2/7/05) notes independent - ambulation, self- help, and good language skills. Notes full scale IQ of 61 but notes average skills. Report suggests that claimant does not require 24 hour supervision but does require training and monitoring. Notes inconsistency in ABS scores and vagueness of recommendation. .

(5) _____ testified that he believes average IQ is 100- 110. He went to HS and graduated in 1989 – classes were SE. He has an aide with him 4 hours per day. They provide some transporting.

(6) [REDACTED] testified that the claimant has indicated to him that he thinks the 2nd evaluation is more accurate (E-4).

VIII. 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. Evaluations must demonstrate that an individual has a diagnosis of mental retardation and/or a related condition which constitute a severe chronic disability which substantially limits functioning in three or more of the following areas of major life activities; Self-Care, Learning, Mobility, Capacity for Independent living, Receptive and Expressive Language, Self-Direction and Economic Self-Sufficiency. Evidence reveals that the claimant is essentially independent in 6 categories: Ambulation, Self-Care- he adequately manages his personal needs, bathing dressing etc, Language- adequate comprehension and response, Capacity for Independent Living- lives independently at this point, Self-Direction- he is social involved (hobbies, interests etc.), Learning- IQ 80 or 61 however he appears to have acquired a more than adequate level concerning functional academics. Evidence suggests that only Economic Self-Sufficiency may be a qualifying deficit.

(2) Chapter 4, Page 34 (VII, A, 2) of the Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual states that diagnostic Impressions for MR/DD Waiver Program eligibility must include a statement of need for an ICF/MR level of care based on the participant's need for habilitation services. This recommendation must be supported by evaluation results which indicate home and community based services are appropriate. Evidence indicates that no clear recommendation for ICF/MR level of care has been made on the last 3 evaluations completed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department of Health and Human Resources to terminate the claimant's benefits under the Medicaid MR/DD Home and Community Based Waiver Services Program as set forth in the November 29, 2004 notification. I find that evidence offered failed to establish the existence or potential of substantial limitations in functioning in at least 3 of the 7 specified areas of "Major Life Activities".

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29