



State of West Virginia

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Office of Inspector General

Board of Review

235 Barrett Street

Grafton WV 26354

May 18, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

\_\_\_\_\_ for \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program was not demonstrated.

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 October 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  
[REDACTED]

## DECISION OF THE STATE HEARING OFFICER

\_\_\_\_\_,  
Claimant,

Action Number \_\_\_\_\_

v.

**West Virginia Department of health & Human Resources,**  
**Respondent**

### I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 16, 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 25 2005 on a timely appeal filed November 23, 2004. Request received by HO January 10, 2005. 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:

\_\_\_\_\_, claimant mother  
\_\_\_\_\_, claimant's father

\_\_\_\_\_  
Susan Hall, Program Coordinator, MR/DD Waiver, Office of Behavioral Health Services  
Richard Workman, Psychological Consultant, Office of Behavioral Health Services  
Ms. Hall and Mr. Workman participated by phone  
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 Lisa Price dated 10/18/04

E-2- Notification dated 11/29/04

E-3- Psychological Evaluation, 9/7/04

E-4- [REDACTED] Neurodevelopmental Clinic Report, 10/18/04 (Faxed to OBHS- 3/25/05).

E-5- Psychological Evaluation, 3/7/05, (Faxed to OBHS- 3/25/05)

E-6- 3/28/05 OBHS response (argument) to information faxed 3/25/05 and copy of correspondence to claimant 3/30/05 with opportunity to address agency's argument.

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

(1) Hearing request received by the State Hearing Officer January 10, 2005 based on notification of termination dated October 29, 2004. January 11, 2005, the OBHS was contacted and a hearing date of March 25, 2005 granted at which time the hearing was convened. Notice of 2/3/05 concerning scheduling of hearing 4/13/05 was sent in error.

(2) During the hearing, Exhibits as noted in Section VI above were submitted

(3) Susan Hall noted exhibit E-1 of 10/18/04 that ICF/MR level of care was not recommended and is a requirement for program eligibility. Notification of closure sent to claimant 10/29/04 (E-2). Policy addressing the situation is in the MR/DD Manual, Chapter 4, page 34--eligibility must include a recommendation that the individual requires an ICF/MR level of care based on a need for habilitation services. This recommendation must be supported by evaluation results which indicate home and community based services are appropriate.

(4) Richard Workman testified that E-3 and 4 differ in their diagnosis of autism. Notes from E-3 that child has excellent ROM and is able to walk, run and participate in demanding physical activities. Communicates very well with an age appropriate vocabulary. Indicates no significant delays in mobility or language. Section on independent function indicates the child is independent in self-care. Is alert and oriented to person, place and time. Has a bike and enjoys TV- indicating self-direction. Conclusions state "development continues to be delayed. She can, therefore benefit from 1:1 academic assistance. However, evaluation does not support a diagnosis of Autism disorder. Therefore, according to this evaluation, [REDACTED] does not meet criteria for Title XIX Waiver benefits". E-4 indicates

probable Autism. Problem is that program is for those with severe or chronic disability and delay. Mild delays and mild MR are not eligible conditions. E-4 also indicates that child is in regular 2<sup>nd</sup> grade and is toilet trained and will initiate on her own; however she is unable to clean herself or wash her hands. Likes to dance and attends a dance class. Drawings made, telling stories. Notes that report indicates that child clearly continues to meet the criteria for the diagnosis of autism –which is not a clearly defined diagnosis.

(5) \_\_\_\_\_ testified even though child is in 2<sup>nd</sup> grade she is not reading at even a 1<sup>st</sup> grade level. She has trouble with comprehensive. She gets 1:1 training from an autism trainer. She is not on a 2<sup>nd</sup> grade level in spelling. She has her own list and does not do what the rest of the class does. Her last report card was all F's even with all the modifications made. Feels current placement is not correct. Dr. Poe indicated that she did not diagnose children. Notes from E-5 that child could not name her school, grade or the date. Didn't understand what was asked and answers sometimes are not relevant. Wasn't toilet trained until she was 5. Speech is not delivered in comprehensive sentences. Child must be encouraged to perform tasks.

(6) \_\_\_\_\_ questions certification of individual who completed E-3- Psychological evaluation. Feels first psychological evaluation wasn't accurate.

(7) Decision taken under advisement to allow agency an opportunity to evaluate E-5 which was presented by the claimants at the hearing. E-Mail communication from agency 3/28/05 indicating no change in their earlier determination. Copy of E-Mail sent to claimant 3/30/05 with opportunity for response within 10 days. As of the date of this decision no further response from claimants.

(8) Psychological evaluation of 3/7/05 (E-5) indicates no physical or psychomotor deficits. Articulation difficulties however speech is clear and coherent. Requires prompting with bathing and dressing. Cannot tie shoes or comb hair. Some orientation problems- time, place, day. Involved in church, dances and crafts. Enjoys movies and games. Full scale IQ 70. ABS scores (MR Norms) are average with exception of vocational, social engagement, interpersonal behavior and social and person adjustment. .

## **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 or less than severely delayed, for her age, in the following life activities- mobility, language, self- care, self- direction, (potentially) capacity for independent living. Learning is a questionable area based primarily on the testimony of the claimants. Based on the total of documented and alleged delays the claimant's potential for economic self- sufficiency is in doubt.

(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 most recent evaluations.

## **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 October 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".

**Language-** some articulation difficulties but speech clear. **Self- Care-** age appropriate with some non-severe/non-chronic delays. **Self- Direction-** shy but interested in dance, crafts and games with family. **Mobility-** no current barriers. **Learning-** possibly severe deficit based on testimony of claimants, however full scale IQ is 70- borderline intellectual functioning and child remains in 2<sup>nd</sup> grade class.

**Economic Self-Sufficiency** and **Capacity for Independent Living**-These categories entail some prediction of future events. While in some instances identifiable deficits and related physical and mental conditions may conclusively provide guidance in discounting the individual's potential in these areas, I find evidence offered here fails to convincingly establish sufficient limitation in *Capacity for independent Living* to make a prediction of a qualifying deficit possible. The child displays age appropriate behavior in all categories relating to independent living and thus suggests independence as an adult. The claimant's *Economic Self- Sufficiency* is less predictable or certain based on the claimant's psychological profile. Therefore, independence in this category at present seems doubtful. In summery, severe qualifying deficits were found only in learning and economic self-sufficiency

## **X. RIGHT OF APPEAL**

See Attachment.

## **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

IG-BR-29

**ENTERED this 18<sup>th</sup> Day of May 2005,**

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**Ron Anglin**  
State Hearing Examiner