



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 24, 2005

By _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your daughter's hearing held May 5, 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 500-8).

The information which was submitted at the hearing revealed that your daughter does have a qualifying diagnosis for the MR/DD Waiver Program however; her 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: Cecilia Brown, BBHHF
Linda Workman, BBHHF
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 May 5, 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 5, 2005 on a timely appeal filed January 21, 2005.

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 mother

_____, claimant's father

_____ MRDD Educational Services

_____ Potomac Highlands Guild

Cecilia Brown, MR/DD Waiver Program

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

D-2 Annual Medical Evaluation dated November 16, 2004

- D-3 Comprehensive Psychological Evaluation dated September 29, 2004
- D-4 WV Birth To Three Communication Evaluation dated January 27, 2005
- D-5 Physical Therapy Update dated January 20, 2005
- D-5a Physical Therapy Evaluation
- D-6 Social History dated October 22, 2004
- D-7 School Psychologist Assessment report dated September 14, 2004
- D-8 Individual Program Plan dated October 22, 2004
- D-9 Assessment by [REDACTED] MR/DD Education Services
- D-10 Notice of denial dated December 28, 2004

VII. FINDINGS OF FACT:

1. _____ is a 17 month old female who, resides with her family. Her age at the time of the application for MR/DD waiver services was approximately 09 months. _____ is diagnosed with Down syndrome.
2. _____ has an Axis I. diagnosis of Pervasive Developmental Disorder NOS, an Axis II diagnosis of Mental Retardation with Severity Unspecified, an Axis III diagnosis of Trisomy 21/Down syndrome, and an Axis IV diagnosis of Psychosocial Stressors. A Comprehensive Psychological Evaluation completed on September 29, 2004 by Psychologist, Sheri Coleman and _____ makes a recommendation that this claimant remain in the home of her parents and continue services through the Birth through 3 Program. It further identifies her diagnosis as a qualifying diagnosis for the MR/DD program and suggests that services through the Community Based Waiver program would be helpful in her training and aid in the prevention of institutionalization. The evaluation also states that _____, “has an excellent prognosis for developing the needed adaptive skills”.
3. Test results reported on the September 2004 Psychological were derived from the Bayley Scales of Infant Development, 2nd Edition, and also from the Vineland Adaptive Behavior Scales instrument. At age 09 months, the results from these test are as follows:

Bayley Scales of Infant Development:

Intellectual/Cognitive scores,

Mental scale is age equivalent of 5 months

Motor scale is age equivalent of 3 months

Vineland Adaptive Behavior Scales:

Adaptive Behavior,

Communication domain - age equivalent of 5 months

Daily living skills domain - age equivalent of 9 months

Socialization domain age - age equivalent of 1 year 3 months

Motor skill domain - age equivalent of less than 1 month

It is noted that these scores will continue to change as _____ ages and will further delineate from the mean. In the results of both testing instruments it is noted that Motor skills are showing substantial delays at this early age. All other scores are recorded to be above the half way mark of her chronological age at the time of testing.

4. A Communication Evaluation completed by Speech-Language Pathologist, _____ of the Birth to Three program was submitted as evidence. This report concludes that _____ responds to stimulation by looking, reaching and by starting to make some differentiating vocalizations. This report recommends speech and language therapy at least one time per month.
5. A Physical Therapy Update completed by Physical Therapist, _____ on January 20, 2005, reports that _____ is functioning at the six to eight month level. _____'s chronological age at this date was 13 month. The report indicates that _____ is willing to work to get what she wants and that she does not passively sit by and watch things happen.
6. An Assessment Report completed by School Psychologist, _____ on September 14, 2004 summaries that _____'s motor development would appear to be a major impediment.
7. _____ MR/DD Educational Services produced a report of an assessment completed by _____ M.A. Ed, Developmental Specialist. This assessment was completed using the Battelle Developmental Inventory, parent interview and observation. Results from this assessment completed when _____ was 09 months old places _____ as follows:
 - Personal Social - 5 months
 - Receptive Communication Domain - 8 months
 - Expressive Communication Domain - 4-5 months
 - Cognitive Domain - 5 months
 - Adaptive Domain - 3 months
 - Gross Motor Domain - 3 months
 - Fine Motor Domain - 3 months.
8. _____ is reported to be able to sit with support. She cries when she is hungry. She grasps and retains objects. She is eating some table food from a spoon. She can stand while holding on to an adult for support. She has not yet mastered getting herself up into a sitting position, but is close to obtaining this skill.

VIII. CONCLUSIONS OF LAW:

1. Eligibility Criteria for the MR/DD Waiver Program are outlined in Chapter 500 of the Title

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
- 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.)

(6)

- 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:

This claimant does have a qualifying diagnosis for the MR/DD Waiver Program. She also received the required recommendation for ICF/MR level of care from both a Physician and a Psychologist however; tests results, progress reports and testimony do not support a finding of three areas of substantial limitations in functioning. At the young age of 09 months, _____ was not showing a functioning level which is substantially lower than others of the same age. She is showing the most significant delay in her motor skills. Other skills are showing signs of delay but have not proven to be substantial in nature. _____ did not at the time of application have substantial limited functioning in three (3) or more of the major life areas. 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 _____ did not meet the medical eligibility criteria for the MR/DD waiver program for the application which was processed in December 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 24 Day of May, 2005

State Hearing Officer

