



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton, WV 26354
August 2, 2005

Joe Manchin
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 June 13, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the MR/DD 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 MR/DD Home and Community-Based Waiver 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 a diagnosis of mental retardation and/or a related condition. The condition must be severe and chronic with concurrent substantial deficits that 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 502.1).

The information submitted at the hearing revealed that an eligible diagnosis was not established and your son's condition does not require the considerable degree of care and services that are ordinarily provided in an ICF/MR Facility.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their decision to deny your MR/DD Waiver application as set forth in the January 6, 2005 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Stephen Brady, Acting Program Coordinator, MR/DD Waiver Program

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

Claimant,

vs.

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 August 2, 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 June 13, 2005 on a timely appeal filed January 26, 2005. 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

REM

QMRP

Steven Brady, Acting Program Coordinator, MR/DD Waiver Program
Linda Workman, Psychologist Consultant, Bureau for Medical Services
Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether the Department was correct in their action to deny the claimant's application for benefits and services through the MR/DD Waiver Program?

V. APPLICABLE POLICY

Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 500-8 (revised October 2004).

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments' Exhibits:

- E-1 MR/DD Policy Chapter 500 § 500- 509.1
- E-2 DD-2A, Annual Medical Evaluation, 12/6/04
- E-3 Comprehensive Psychological Evaluation dated 9/9/04
- E-4 Notification, 1/6/05
- E-5 Social History, 11/3/04
- E-6 Psychoeducational Evaluation, 3/17/04
- E-7 IPP and additional material

Claimant's Exhibits:

- C-1 Information supplied consisting of 4 statements
- C-2 [REDACTED] Co Schools, Career Awareness/Job Exploration, 11/29/04 and 3/7/05
- C-3 Statement, [REDACTED] MD, 2/9/05

VII. FINDINGS OF FACT:

- 1) On January 6, 2005, a Notice of Denial (E-4) was sent to the claimant. Basis of decision- no eligible diagnosis and lack of substantial deficit in 3 of 7 major life areas. A hearing was requested January 26, 2005. A hearing was scheduled for May 9, 2005. The claimant requested a reschedule (Wednesday not a good day) and the hearing was scheduled for May 19, 2005. The agency then requested a postponement (psychologist not available) and the hearing was scheduled and convened June 13, 2005.
- 2) Exhibits as listed in section VI above were accepted.
- 3) Testimony was heard from the individuals listed in section III above.
- 4) E-2, Annual Medical Evaluation of 12/6/04 reveals no areas requiring special care. Diagnosis is Autism- highly functioning

- 5) E-3, Psychological evaluation of 9/9/04 provides diagnoses of Asperger's Disorder (R/O Autistic Disorder), borderline intellectual functioning. Notes full scale IQ of 76. Scores in perceptual reasoning and memory index were in average range
- 6) E-6, Psychoeducational evaluation of 3/17/04 indicates that Asperger's Syndrome is "likely to very likely". This report provides a full scale IQ of 76. Report notes that because intellectual findings do not coincide with earlier findings validity might be unreliable. ADHD was not indicated.
- 7) The Department reviewed the medical information. Full scale IQ of 76 would be characterized as borderline. Eligible for scores would be 55 or below. Percentile scores should be below 1 while claimant is at 5. Eligible ABS scores would be 1. Only 2 categories- independent functioning and economic activity are 1's.
- 8) The agency's psychologist asserted that Asperger's is not an eligible diagnosis for purposes of the MR/DD program. From DSM-IV, this diagnosis does not result in substantial adaptive impairment. Lack of social interaction and repetitive behavior characterize this condition. Claimant meets substantial functional deficits criteria, at best, only in "self-care" and "capacity for independent living".
- 9) Testimony was offered on behalf the claimant regarding his inability to provide self-care. He reads at about a 7th grade level. He falls while running on occasion. Sometimes laughs inappropriately.
- 10) 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 (Revised October 1, 2004).
 - 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.
 - Substantially limited functioning in three or more of the following major life areas: self-care, receptive or expressive language, learning, and mobility, and self-direction, capacity for independent living or economic self-sufficiency.
 - 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.

VIII. CONCLUSIONS OF LAW:

1. Policy provides that to qualify for the MR/DD program an individual must have a diagnosis of mental retardation or must have a "related developmental condition", which constitutes a severe, chronic disability with concurrent substantial deficits. The preponderance of evidence suggests a diagnosis of Asperger's Syndrome. From testimony offered and policy available there is no indication that this condition qualifies as "related developmental condition".

2. Policy also provides that the individual must possess substantially limited functioning in three or more of the designated major life areas: The evidence fails to demonstrate that the claimant exhibits substantial adaptive deficits in three (3) or more of the seven (7) major life activities

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the MR/DD Waiver Program as set forth in the January 6, 2005 notification.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 2nd Day of August , 2005

Ron Anglin
State Hearing Examiner