



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
Governor

Martha Yeager Walker
Secretary

July 19, 2005

_____ for

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your daughter's hearing held July 18, 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 while your daughter has a program qualifying diagnosis, her condition does not require the "level of care" that is 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 application for benefits and services through the MR/DD Waiver Program.

Sincerely,

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

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

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

Claimant,

vs.

Action Number: 05-BOR-4785

**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 July 19, 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 July 18, 2005 on a timely appeal filed February 3, 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

_____, Claimant's mother

_____, Claimant's grandmother

Steven Brady, Acting Program Coordinator, MR/DD Waiver Program

Linda Workman, Psychologist Consultant, Bureau for Medical Services

Presiding at the hearing was Thomas E. Arnett, 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 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:

D-1 Notice of Denial dated 2/4/05

D-2 DD-2A, Annual Medical Evaluation 10/26/04

D-3 Comprehensive Psychological Evaluation (Triennial) dated 10/26/04

D-4 DD-4, MR/DD Social History dated 10/27/04

VII. FINDINGS OF FACT:

1. On February 4, 2005, a Notice of Denial (D-1) was sent to the Claimant. This notice includes some of the following pertinent information:

Your Waiver Application is hereby denied

Documentation submitted for review does not support the presence of substantial adaptive deficits in three of the seven major life areas identified for eligibility for the Title XIX MR/DD Waiver program.

2. The Department stipulated that the Claimant has an eligible diagnosis, Moderate Mental Retardation, but contends that the Claimant does not exhibit substantial adaptive deficits (substantial limitations associated with the presence of mental retardation) and therefore does not meet level of care criteria necessary in establishing medical eligibility.
3. The Department reviewed the Claimant's functionality in the seven major life areas and stipulated that the IEP dated May 25, 2004 supports the finding of a substantial adaptive deficit in Learning.
4. The narrative information and Adaptive Behavior Scores reviewed in exhibit D-3 (Psychological Evaluation), as well as the narrative information included in exhibit D-4 (Social History), fail to identify substantial adaptive deficits in Self-Care, Receptive or Expressive language, Mobility, Self-Direction, Capacity for Independent Living or Economic Self-Sufficiency.
5. Testimony received on behalf of the Claimant corroborates the existence of a substantial adaptive deficit in Learning, however, the clinical findings reviewed by the Department were uncontested and no additional evidence was presented to identify substantial adaptive deficits in any of the other major life areas.
6. 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).

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.)
 - 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).
 - Economic Self-Sufficiency

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.

VIII. CONCLUSIONS OF LAW:

1. The Claimant has a program qualifying diagnosis of Mental Retardation. This condition is severe and chronic.
2. The evidence fails to demonstrate that the Claimant exhibits substantial adaptive deficits in three (3) or more of the seven (7) major life activities, as required by policy.
3. Testimony received on behalf of the Claimant clearly indicates that her abilities are delayed when compared to her peers, however, there is insufficient evidence to demonstrate that the Claimant requires the level of care and services provided in an ICF/MR institutional setting.

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.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 19th Day of July, 2005

State Hearing Officer