



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
100 Capitol Street, Suite 303
Charleston, WV 25301

Bob Wise
Governor

Paul L. Nusbaum
Secretary

July 26, 2005

Dear Mr. [redacted]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 27, 2005. Your Hearing request was based on the Department of Health and Human Resources' action to deny your waiver application to the Medicaid 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 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), 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 1, Section I)

The information which was submitted at the hearing revealed that while [redacted] is not substantially limited in three or more major life activities.

Therefore, it is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application to the MR/DD Waiver Program.

Sincerely,

Michael D. Payne
State Hearing Officer
Member, State Board of Review

cc: Steve Brady, Bureau of Medical Services
Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: [REDACTED]

ADDRESS: [REDACTED] WV 25705

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing commenced and concluded on June 27, 2005 for [REDACTED].

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.

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

[REDACTED], Claimant
[REDACTED], Claimant's mother

Steve Brady, Bureau of Medical Services
Linda Workman, Psychologist Consultant

Presiding at the hearing was Michael D. Payne, 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 claimant meets the medical criteria necessary to establish eligibility for the MR/DD Waiver Program.

V. APPLICABLE POLICY

Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 1, Section I.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits

- D1. Notice of Denial dated January 17, 2005
- D2. DD-3, Psychological Evaluation, dated 8/25/04
- D3. DD-1, Demographics/Monitoring Report, undated
- D4. DD-2A, Annual Medical Evaluation dated 9/2/04
- D5. ABS, dated 8/25/04
- D6. CCS Individualized Program Plan, dated 3/12/04
- D7. Waiver Update, 8/25/04

Claimant's exhibits:

- C1. Letter from [redacted] M.D. dated 2/11/05.
- C2. Letter from [redacted] M.D. dated 1/31/05
- C3. Letter from [redacted] dated 3/21/05
- C4. Letter from [redacted] dated 2/17/05
- C5. Letter from [redacted], undated
- C6. Letter from [redacted] and [redacted], dated 2/18/05
- C7. Letter from the congregation of St. Peter's Episcopal Church, dated 2/19/05
- C8. Letter from [redacted], undated
- C9. Letter from [redacted], dated 2/15/05
- C10. Letter from [redacted], undated
- C11. Letter from [redacted], undated
- C12. Prescriptions

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. On January 17, 2005, a notification was sent to the claimant advising that his application to the MR/DD Program was denied—"Documentation submitted for re-certification review does not support the presence of substantial adaptive deficits in three of the seven major life areas identified for Waiver eligibility which are relevant to Mr. [REDACTED], status as a child.
2. [REDACTED] has been diagnosed with Autism and Mild Mental Retardation but .
4. The evidence does demonstrate that [REDACTED] had a severe chronic disability prior to the age of twenty-two (22) years of age.
5. [REDACTED]'s condition is likely to continue indefinitely.
6. Self Care- [REDACTED] is substantially limited in this area.
7. Learning- [REDACTED] is not substantially limited in this area.
8. Mobility- [REDACTED] not limited in the area of Mobility.
9. Capacity for Independent Living- [REDACTED]'s age prevents any accurate assessment of whether he would be substantially limited in this area.
10. Receptive and/or Expressive Language- [REDACTED] is not substantially limited in this area.
11. Self Direction- [REDACTED] is not substantially limited in this area.
12. Economic Self-Sufficiency- [REDACTED]'s age prevents any accurate assessment of whether he would be substantially limited in this area.

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. The level of care criteria for medical eligibility are listed at Section I within this chapter and read as follows:
 - A. 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 conditions(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).

[An Intermediate Care Facility is defined as one that provides services in an institutional setting for persons with mental retardation or related conditions. The primary purpose of the institution is to provide services to individuals who are in need of and who are receiving active

treatment.]

- B. The following list includes some examples of **related conditions**. **This list does not represent all related conditions.**
1. Autism or Pervasive Developmental Disability, NOS
 2. Spina Bifida
 3. Cerebral Palsy
 4. Tuberous Sclerosis
 5. Traumatic Brain injury and/or Spinal Cord injuries (occurring during the developmental period).
- C. The evaluations must demonstrate that an individual has a diagnosis of **mental retardation** and/or a **related condition** which constitute a severe chronic disability which is:
1. Attributable to a mental or physical disability or a combination of both;
 2. Manifested before a person reaches twenty-two (22) years of age;
 3. Likely to continue indefinitely; **and**
 4. **Substantially** limits functioning in **three or more** of the following areas of major life activities;
 - a. Self-Care
 - b. Learning (functional academics)
 - c. Mobility
 - d. Capacity for Independent Living (home living, social skills, health and safety, community use, leisure)
 - e. Receptive and /or expressive Language
 - f. Self-Direction
 - g. Economic Self-sufficiency (Employment)
- D. Level of care determinations are made by the Office of Behavioral Health Services (OBHS) and the Bureau for Medical Services (BMS) based on the medical, psychological and social evaluations (DD-2A, DD-3, and DD-4)
- E. Evaluations must demonstrate the need for an ICF/MR level of care and services. This is demonstrated by the individual's need for intensive instruction, services, safety, assistance and supervision to learn new skills and increase independence in activities of daily living. The level of care and services needed must be the same level which is provided in an ICF/MR facility.

VIII. DECISION

It is the opinion of this hearing examiner that [REDACTED] does not meet the eligibility criteria for the Title IX MR/DD Waiver Program. First, [REDACTED] has been diagnosed with Autism and Mild Mental Retardation which was manifested prior to reaching the age of 22.

[REDACTED] can handle most hygienic, feeding, and clothing activities. However, these activities can only be successfully accomplished with prompting and assistance. This is corroborated by the ABS which lists "Independent Functioning" As a result, [REDACTED] is substantially limited in the area of Self Care.

[REDACTED] attends regular classes at his elementary school, only attending Autism classes on "off days." Further, [REDACTED] has shown limitations in math, abstract thought, but he seems to hurry through his work and lose focus. While [REDACTED] clearly has limitations in this area, he is not substantially limited in Learning.

[REDACTED] is not substantially limited in the area of Mobility.

[REDACTED] has not shown that he is substantially limited in the area of Receptive or Expressive Language. His main problem in this area is employing the appropriate volume, place, and time for employing his language. As a result he is not substantially limited in the area of Receptive or Expressive Language.

Likewise, [REDACTED] has not shown that he is substantially limited in the area of Self-Direction. [REDACTED] knows he is about to go to Middle School and is apprehensive about this change. He also rushes through subjects at school so that he can do things he finds more attractive. Again his problem seems to be finding the appropriate volume, place, and time for doing the things he wishes. As a result he is not substantially limited in the area of Self-Direction.

The areas of Economic Self-Sufficiency and Capacity for Independent Living are impossible to assess because no child of Michael's age would be expected to handle these activities successfully.

As a result, It is the decision of this State Hearing Officer to **UPHOLD** the Department of Health and Human Resources' action to deny your application for the Medicaid MR/DD Home and Community Based Waiver Services Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.