



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 III
Governor

February 22, 2005

____ for

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your son's application for benefits and services through the 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 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). (West Virginia Title XIX MR/DD Waiver Home & Community-Based Policy Manual)

Information submitted at the hearing reveals that your son fails to meet the required "Level of Care" criteria necessary in establishing medical eligibility for participation in the Title XIX MR/DD Home & Community-Based Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny your application for benefits and services through the MR/DD Home & Community-Based Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review

Susan Hall, Program Coordinator, MR/DD Waiver

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 22, 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 convened on January 19, 2005 on a timely appeal filed June 22, 2004.

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's father/representative

_____, MR/DD Program Coordinator

Linda Workman, Psychologist Consultant, OBHS

Presiding at the hearing was Thomas Arnett, 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:

West Virginia Title XIX MR/DD Waiver Home & Community Based Services Handbook

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 DD-2a, Annual Medical Evaluation dated 11/4/03
- D-2 Psychological Evaluation dated 11/17/03
- D-3 Social History dated 12/16/03
- D-4 Notice of Denial dated 3/31/04

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) In response to an application for benefits and services through the Title XIX MR/DD Waiver Program, the Department sent a Notice of Denial (D-4) to the Claimant on March 31, 2004. This notice states, in pertinent part:

Your Waiver Application is hereby denied.

Your application was denied because: Documentation submitted does not support the presence of substantial adaptive deficits in three of the seven major life areas identified for Title XIX MR/DD Waiver eligibility nor support the need for active treatment such as that provided in an institutional setting.

- (2) The Department acknowledged that the Claimant has a program qualifying diagnosis of Mental Retardation, his condition is attributable to a mental or physical disability or a combination of both, was manifested before twenty-two (22) years of age and his condition is likely to continue indefinitely. However, the Department contends that the Claimant does not require an ICF/MR (institutional) level of care because he does not exhibit substantial deficits in three of the seven major life areas and he does not require active treatment consistent with individuals who reside in ICF/MR facilities. The Department cited exhibits identified as D-1 thru D-3 in support of their finding.
- (3) The Department cited information found in exhibit D-3 to support their finding that the Claimant does not exhibit substantial adaptive deficits in three of the seven major life areas.

Self-Care- The Claimant is described as independent in all aspects of Self-Care. He is able to eat, dress, toilet and bathe independently

Mobility - He does not meet the Mobility criteria as he is clearly ambulatory and psychomotor skills are reported to be within normal limits.

Language - He is verbal and can converse using complex sentences. He has a full use of language.

Self-Direction –He is very active and socially engaged. He enjoys completing puzzles, playing with the computer, wood carving and painting, and is reported to enjoy social outings and bowling

Learning - A substantial deficit cannot be identified as learning abilities were not assessed in the evaluation submitted. It was noted, however, that he graduated from [REDACTED] School and attended special education classes.

Capacity for Independent Living –The information reviewed for this program indicates that the Claimant could live on his own. He takes care of his living environment, keeps things neat and clean, and he can fix breakfast & lunch.

- (4) The Department acknowledged that the Claimant exhibits a substantial deficit in Economic Self-

Sufficiency but went on to say that the evidence does not support the need for active treatment.

- (5) Page 4 of the Annual Medical Evaluation (D-1), completed on November 4, 2003, fails to identify problems that require special care or the need for active treatment and training in a particular area. According to the information provided by the physician, the Claimant is ambulatory, he is continent, he feeds himself, he takes care of his personal hygiene by himself, and describes his mental and behavioral status as alert. The physician does not indicate the need for speech, physical or occupational therapy and no other recommendations are noted. The diagnostic section includes a diagnosis of Mental Retardation and the physician provides a prognosis of fair. The physician certifies the Claimant's need for an ICF/MR level of care even though there are no special problems noted.

- (6) _____ testified that he doesn't understand how his son is not eligible when the physician and the psychologist recommended an ICF/MR level of care. He does not believe that his son will ever be able to live on his own and he is concerned what is going to happen to his son when he and his wife are no longer around.

- (7) MR/DD Policy Manual, Chapter 1:

I. Level of care Criteria for medical eligibility

- 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).

- 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:

The evidence submitted fails to demonstrate that the Claimant meets the required "Level of Care" criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Program.

It is therefore the decision of the State Hearing Officer to **Uphold** the Department's action to deny your application for benefits and services through 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.