



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
March 21, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 2, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your medical coverage under the Medicaid, 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 Medicaid, MR/DD Home and Community-Based Waiver Services Program is based on current policy and regulations. In order to be eligible to receive MR/DD Waiver Program Services, an individual must require the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded). Additionally, a recipient must require active treatment. Active Treatment is the aggressive, consistent implementation of a program of specialized and generic training, treatment, and health services. (MR DD Waiver Manual §501 and 503)

The information which was submitted at your hearing reveals that you left the MRDD program in July 2003. Additionally, you are currently incapable of being involved in programs of active treatment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department of Health and Human Resources to terminate your Medicaid coverage under the MR/DD Home & Community Based Waiver Services Program as set forth in the October 7, 2004 notification.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Susan Hall, Operations Coordinator, MR/DD, Office of Behavioral Health Services
[REDACTED] DHHR, Michael Phillips

**WEST VIRGINIA DEPARTMENT OF HEALTH AND 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 March 21, 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 held February 2, 2005 on a timely appeal filed October 6, 2004. It should be noted here that medical coverage has been continued. 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 daughter

_____, cousin, legal guardian

Michael Phillips, ESS, _____ DHHR

Presiding at the hearing was Ron Anglin, 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 continues to be eligible for Medicaid coverage under the MRDD program?

V. APPLICABLE POLICY:

Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Manual, § 501 and 503.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- Combined Application and Review Form, 8/31/04

E-2- Memo _____ July 2003 and Policy section 506

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) Claimant notified 10/7/04 of termination of Medicaid coverage based on MR/DD closure July 2003. Hearing request received 10/6/04. Hearing scheduled and held 2/2/05.
- (2) During the hearing, exhibits as noted in section VI above were submitted
- (3) Michael Phillips testified that Ms _____ completed a case review 8/31/04 for Ms. _____. It was learned that Ms. _____ was no longer receiving services from _____ and the MR/DD case had been closed. A closure letter was sent 10/6/04 and a fair hearing request received. Benefits continue pending a hearing decision.
- (4) _____ testified that _____ needs the medical card as she has had a lot of surgery. She is almost a bed patient now. Has to buy her Ensure which the card does not cover. She receives \$547 in Black Lung benefits and \$337 in SS. She took _____ out of _____ because she wasn't able to be on the program. She is too weak- and cannot walk.
- (5) _____ testified that _____ told them that _____ was not able to participate in the program. They were afraid she would fall and get hurt as was the family. She became exhausted at exertion. Senior center is currently providing services. She is currently on a waiting list for services under another program- possibly ADW.
- (6) Exhibit E-2, Memo of July 2003 notified _____ office that claimant opted off the MR/DD program 7/8/03.

VIII. CONCLUSIONS OF LAW:

- (1) MR DD Waiver Manual §503 reads in part:
BMS and OBHS determine the medical eligibility for an applicant in the MR/DD Waiver Program. In order to be eligible to receive MR/DD Waiver Program Services, an applicant must meet the following medical eligibility criteria:
Require the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded). An ICF/MR facility provides 24 hour supervision, training, and supports.
Active Treatment • (recipient) requires and would benefit from continuous active treatment.
- (2) MR DD Waiver Manual §501- Definitions:
Active Treatment is the aggressive, consistent implementation of a program of specialized and generic training, treatment, and health services. Active treatment does not include services to maintain generally independent members who are able to function with little supervision or in the absence of a continuous active treatment program.

IX. DECISION:

MR/DD Waiver Program Services eligibility requires the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded). Among other requirements is that a recipient must require active treatment. Active Treatment is defined as the aggressive, consistent implementation of a program of specialized and generic training, treatment, and health services.

Evidence reveals the claimant chose to leave the MRDD program in July 2003. Testimony reveals that the claimant is not currently capable of active treatment. She is essentially bed bound at this point. It appears that her weakness at the time and possibility of injury resulted in her leaving the program in 2003.

It is the decision of the State Hearing Officer to **uphold** the proposal of the agency to discontinue Medicaid coverage

under the MRDD Program. Program eligibility requires that a MRDD program recipient be capable of active treatment. Based on evidence provided, I cannot find that the claimant is currently capable of such treatment. If not eligible for the MRDD program, an individual is not eligible for Medicaid coverage under that program. It would appear that the claimant might indeed benefit from an institutional level of care however Medicaid coverage under the MRDD program is not currently appropriate.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29