



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin  
Governor

Martha Yeager Walker  
Secretary

May 23, 2005

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held April 27, 2005. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for MR/DD Waiver Program benefits.

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). The condition must be severe and chronic, in conjunction with substantial deficits 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 500-8).

The information which was submitted at the hearing revealed that your son does not have a qualifying diagnosis for the MR/DD Waiver Program and his condition does not require the level of care provided in an ICF/MR Facility.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their denial of services under the MR/DD Waiver Program.

Sincerely,

Sharon Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Susan Hall, BBHMF  
Rick Workman, BBHMF  
Chairman, BOR

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

\_\_\_\_\_ by \_\_\_\_\_,

**Claimant,**

**v.**

**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 April 27, 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 April 27, 2004 on a timely appeal filed February 7, 2005.

It should be noted here that the claimant's application for the MR/DD Waiver Program has been denied.

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 father  
Susan Hall, MR/DD Waiver Program Manager  
Workman, Psychologist Consultant, Bureau for Medical Services

Presiding at the hearing was Sharon Yoho, 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 it has been established that the claimant meets the medical eligibility criteria for the MR/DD Waiver Program

### **V. APPLICABLE POLICY**

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

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

Departments' Exhibits:

- D-1 MRDD Medical Eligibility Criteria, Chapter 500
- D-2 Annual Medical Evaluation dated August 25, 2004
- D-3 Comprehensive Psychological Evaluation dated August 09, 2004
- D-4 Adaptive Behavior Scale (ABS) test report dated August 09, 2004
- D-5 ABS Exam Booklet dated August 07, 2004

- D-6 Social History dated October 05, 2004
- D-7 Individual Program Plan dated October 5, 2004
- D-8 Notice of denial dated December 13, 2004

Claimants' Exhibits:

- C-1 National Institute of Mental Health regarding Autism Spectrum Disorders

## **VII. FINDINGS OF FACT:**

1. \_\_\_\_\_ is a 6-year-old male who, resides with his family. He is diagnosed with Asperger's Syndrome. He attends public school in a regular classroom setting. He has a reported Full Scale IQ of 118.
2. \_\_\_\_\_ has an Axis I. diagnosis of Asperger's Disorder (Provisional), Attention Deficit/Hyperactivity Disorder, Combined Type. Asperger's Syndrome is not considered to be a qualifying diagnosis for the MR/DD waiver program as it not identified as a condition associated with substantial deficits. This claimant's MR/DD application was denied due to the absence of a qualifying diagnosis.
3. His annual medical evaluation of August 25, 2004 reports that assistance is needed with personal hygiene and close supervision is needed. Notation was made by the evaluating physician along side of these findings that, "the patient is a child." This physician also noted in the prognosis section of the evaluation that "patient has normal intelligence, he should do well." This medical evaluation concurs with the Agency's identification of Asperger's Syndrome as a condition with no symptoms of substantial deficits.
4. A comprehensive psychological evaluation was completed on August 4, 2004. This evaluation reported \_\_\_\_\_ to have a very clumsy gait. It reports him to be toilet trained but needs reminding. He is reported to be socially withdrawn and aggressive at times towards siblings. His behavior at school has not exhibited this aggression. His Adaptive Behavior Scale scores were recorded using non-mental retardation norms. No percentage scores were listed to be below the 1% range. His standard scores were reported to be well above 55. He received a standard score for Personal Self-sufficiency of 76, for Community Self-Sufficiency 86 and for Personal-Social Responsibility a score of 67. A score of 55 and below would indicate a substantial deficit.
5. Mr. Workman testified that although there are some delays noted in the Psychological Evaluation, these delays are not significant and this claimant would not require the level of care that is provided in an Institutional setting.

6. Mr. \_\_\_\_\_ voiced his belief that his son's condition does cause substantial delays. He provided as evidence, an article from the National Institute of Mental Health regarding the relationship of Asperger's syndrome with pervasive developmental disorders and Autism Spectrum Disorders. This article does indicate that Asperger's syndrome is considered to be a mild form of "early infantile autism". It states that, "The pervasive developmental disorders, or autism spectrum disorders, range from a severe form, called autistic disorder, to a milder form, Asperger's syndrome". Since Autism is listed as a qualifying diagnosis and Asperger's syndrome is related to Autism, Mr. \_\_\_\_\_ takes the position that it too should be a qualifying diagnosis.

## **VIII. CONCLUSIONS OF LAW:**

1. 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. 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).

### **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.

**IX. DECISION:**

The claimant does have a diagnosis that is related to Autism which is listed as a qualifying diagnosis; however the degree of limitations associated with the diagnosis of Asperger's Syndrome does not meet the qualifications for the MRDD program. It is therefore reasonable for this diagnosis to not be considered as a qualifying diagnosis. Policy is clear that eligibility requires that there be substantial limitations in 3 or more of the major life areas. Evidence submitted in the Physician's medical evaluation and the Psychological evaluation support the decision of the Department, that the claimant did not at the time of application have substantial limited functioning in three (3) or more of the major life areas. There was not sufficient testimony given to counter the findings offered in these two documents. No significant delays or deficits were identified. This claimant's limitations were not severe enough to require the level of care offered in an ICF/MR institutional facility.

It is the finding of the Hearing Officer that \_\_\_\_\_ did not meet the medical eligibility criteria for the MR/DD waiver program for the application which was processed in December 2004. It is the ruling of this hearing officer that the action to deny these benefits was justified and such action is **upheld**

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 23 Day of May, 2005**

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**State Hearing Officer**

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