



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

July 11, 2005

By _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held June 13, 2005. Your Hearing request was based on the Department of Health and Human Resources' proposed action to discontinue services under 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 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 continue to have a qualifying diagnosis for the MR/DD Waiver Program however; his condition no longer requires 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 decision to discontinue services under the MR/DD Waiver Program.

Sincerely,

Sharon Yoho
State Hearing Officer
Member, State Board of Review

cc: Steven Brady, BBHMF
Linda 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 June 13, 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 June 13, 2005 on a timely appeal filed April 21, 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 mother

Steven Brady, MR/DD Waiver Program

Linda 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 the department acted correctly in their decision to discontinue services under 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 Notice of proposed termination dated January 6, 2005
- D-2 MRDD Medical Eligibility Criteria, Chapter 500
- D-3 Annual Medical Evaluation dated November 9, 2005
- D-4 Comprehensive Psychological Evaluation dated August 3, 2004
- D-5 Adaptive Behavior Scale scores dated August 3, 2004

Claimants' Exhibits:

- C-1 Statement made by claimant's sister dated June 13, 2005

VII. FINDINGS OF FACT:

1. Mr. _____ is a 28-year-old male who has been an active participant in the MR/DD Waiver program. His case was undergoing an annual evaluation in the later months of the year 2004.
2. The department determined that Mr. _____ no longer met the medical criteria for the program. A notice of proposed termination was sent on January 6, 2005. This notice advised that the claimant only manifests mild cognitive impairments and that he does not show the presence of substantial adaptive deficits in three of the major life areas identified by the MR/DD waiver program.
3. An Annual Medical Evaluation identifies Mr. _____ as having a diagnosis of Mild Mental Retardation. This evaluation notes that the patient is ambulatory, continent, self-feeding, alert and can perform personal hygiene for self.
4. Test results reported on the August 2004 Psychological were derived from the Adaptive Behavior Scale-Residential/Community: Second Edition, ABS-RC:2). This testing produced the following result for standard scores and ratings:

Independent Functioning	16	Superior
Physical Development	16	Superior
Economic Activity	13	Above Average
Language Development	16	Superior
Numbers and Time	15	Superior
Domestic Activity	14	Above Average
Pre/Vocational	12	Average
Self-Direction	17	Very Superior
Responsibility	13	Above Average
Socialization	13	Above Average
5. The Psychological of August 2005 reported a Full Scale I.Q. of 65. It reports the claimant to be a well-developed adult male who ambulates independently with no apparent difficulty in posture or gait. It reports that he is able to care for his self-help needs; but that he needs verbal prompting. He is reported to communicate with no apparent anomalies. The report indicates that Mr. _____ is oriented to person, place and time. Developmental Findings conclude that the claimant reads at or around a fourth grade level and spells at a sixth grade level. His math skills are at a third grade level.

(4)
6. Psychologist [REDACTED] states in his report the following: “_____ has been a participant in the title XIX waiver program for approximately two years. He has shown steady increase in his acquisition of skills as evidenced by the scores received consecutive administrations of the ABS-RC:2. This increase in scores is very likely due to the routine

which has been established and the supervision provided to him.” Dr. [REDACTED] also recommends that the waiver services continue to prevent the loss of skills.

7. His family reports Mr. [REDACTED] to be unable to accurately tell time unless he has a digital watch or determine if he is receiving accurate change when making a purchase. He needs constant prompting to perform hygiene duties. Ms. _____ also reports that Mr. _____ enjoys playing with children’s toys such as “Hot Wheels” for hours at a time.
8. 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

(5)

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.

VIII. CONCLUSIONS OF LAW:

1. Chapter 500 of the MR/DD Waiver Program manual stipulates that to be eligible, an individual must have a diagnosis of Mental Retardation or related condition, which this (6)

claimant does have. However, the policy states that along with the qualifying diagnosis, the applicant must also exhibit substantial limitation in functioning in three or more of the major life areas. Evidence and testimony does not support that he has the required limitations.

2. Mr. _____ only exhibits substantial limitations in one of the major life areas outlined in Chapter 500 of the MR/DD Waiver policy. His Adaptive Behavior score in the area of Pre-Vocational abilities did indicate that he exhibits substantial limitations in the area of Capacity for independent living.

IX. DECISION:

It is the finding of the Hearing Officer that _____ no longer meets the medical eligibility criteria for the MR/DD waiver program. It is the ruling of this hearing officer that the action to discontinue 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 11 Day of July, 2005

State Hearing Officer