



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton, WV 26354
August 30, 2005

Joe Manchin
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 29, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny benefits and services through 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 for the MR/DD Home and Community-Based Waiver 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 a diagnosis of mental retardation and/or a related condition. The condition must be severe and chronic with concurrent substantial deficits that 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 502.1).

The information submitted at the hearing failed to demonstrate substantial limiting adaptive functioning in 3 of the specified major life areas. Evidence indicates that your condition does not require the considerable degree of care and services that are ordinarily 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 deny your MR/DD Waiver application as set forth in the December 13, 2004 and July 6, 2005 notifications.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Susan Hall, Program Manager, MR/DD Waiver Program
[REDACTED]

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

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 Examiner resulting from a fair hearing concluded on August 30, 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 July 29, 2005 on a timely appeal filed February 18, 2005. 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

Susan Hall, Program Manager, MR/DD Waiver Program

Richard Workman, Psychologist Consultant, Bureau for Medical Services

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether the Department was correct in their action to deny the claimant's application for benefits and services through the MR/DD Waiver Program?

V. APPLICABLE POLICY

Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 500-8 (revised October 2004).

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments' Exhibits:

E-1 MR/DD Policy 500- 509.1

E-1a 42 CFR 435.1009- Code of Federal Regulations

E-2 Notification, 12/13/04

E-3 Notification, 7/6/05

E-4 DD-2A, Annual Medical Evaluation, 7/25/04

E-5 Psychological Evaluation, 8/19/04

E-6 Social History, 7/20/04

E-7 IPP, 7/20/04

Claimant's Exhibits:

C-1 Statement from _____ Schools _____, 6/25/05

C-2 Psychiatric Diagnostic Interview Examination, 3/29/05

VII. FINDINGS OF FACT:

- 1) On December 13, 2004, a Notice of termination (E-2) was sent to the claimant. The basis of decision indicated an inconsistent diagnosis.
- 2) A hearing was requested by the claimant and received by the Board of Review 2/18/05
- 3) This request was received by the hearing examiner March 3, 2005 and a hearing was scheduled for June 8, 2005

- 4) On June 3, 2005, the claimant was notified that the hearing would be postponed due to the unavailability of a hearing officer. The hearing was rescheduled for July 29, 2005
- 5) Additional information was provided to the agency from the case management agency 7/5/05 and a second notification of denial was issued 7/6/05 indicating a lack of substantial deficit in 3 of 7 major life areas.
- 6) The hearing was convened July 29, 2005.
- 7) Exhibits as listed in section VI above were accepted.
- 8) Testimony was heard from the individuals listed in section III above.
- 9) Exhibit E-4, the Annual Medical Evaluation reveals problem areas requiring special care in continence and self-care. Both of these categories have been changed (with initials) from independent. The diagnosis noted is Depression/anxiety.
- 10) Exhibit E-5, the Psychological evaluation of 8/19/04 provides diagnoses of Major Depressive Disorder- in partial remission, PSD, and moderate MR. Notes no physical deficits. Largely independent in Self- Help with verbal prompting in some activities. Assistance in medication compliance. Language skills are "fairly effective". Notes IQ scores -full scale of 52, performance of 56 and verbal of 56. These scores are characterized as indicating mild MR. ABS (Part 1) standard scores (MR norms) range from 9 to 12 with a 6 in Pre/vocational activity and a 7 in self direction. Part 2 scores range from 9 to 13 with a 6 in Social Engagement. An ICF/MR "level of supervision and training" is recommended.
- 11) The agency's psychologist reviewed the medical/social information. Notes from E-4 that diagnosis is depression/anxiety. There is an inconsistency in diagnoses. Claimant had hospitalizations for psychiatric reasons. Information doesn't make clear whether delays are a result of MR or mental health/psychiatric reasons and mental illness is not a qualifying diagnosis. Additionally, claimant does not meet criteria in areas of ambulation, self-help, language, capacity for independent living and self- direction- lived with friend for a time.
- 12) Testimony offered on behalf the claimant indicates that mark outs on DD-2A (E-4) –diagnosis and special care items - were made by the former Case Manager. Claimant is very slow in ambulation and needs prompting in personal care. Her boyfriend does most of the chores. He also helps her with medication administration. He is not in the home all the time.
- 13) 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.
 - 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.
 - Substantially limited functioning in three or more of the following major life areas: self-care, receptive or expressive language, learning, and mobility, and self-direction, capacity for independent living or economic self-sufficiency.

- 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. Policy provides that to qualify for the MR/DD program an individual must have a diagnosis of mental retardation or must have a "related developmental condition", which constitutes a severe, chronic disability with concurrent substantial deficits. While the physical evaluation (E- 4) would seem confuse the issue of diagnosis, the psychological evaluation (E-5) provides a diagnosis of moderate MR. IQ and Adaptive scores would place the claimant in an MR range.
2. Policy provides that the individual must possess substantially limited functioning in three or more of the designated major life areas. The agency conceded a substantial adaptive deficit in "Economic Self-Sufficiency". Testimony and evidence provide some indications that there are several other categories with at least some degree of deficit, e.g. Self-Care, Capacity for Independent Living. However, evidence is less than convincing that in these or any of the other areas of major life activity such deficits rise to the level of "substantial".

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denial of benefits and services through the MR/DD Waiver Program as set forth in the December 13, 2004 and July 6, 2005.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 30th Day of August, 2005

Ron Anglin
State Hearing Examiner