



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901

Joe Manchin
Governor

Martha Yeager Walker
Secretary

October 5, 2005

____ for ____

Dear Ms.____:

Attached is a copy of the findings of fact and conclusions of law on your niece's hearing held July 7, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the MR/DD Waiver Program.

In arriving at a decision, the State Hearing Officer overnerved 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 revealed that while your niece has a program qualifying diagnosis, her condition does not require the "level of care" that is 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 application for benefits and services through the MR/DD Waiver Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Stephen Brady, Acting Director, MR/DD Waiver Program

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

Claimant,

vs.

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 July 7, 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 7, 2005 on a timely appeal filed March 17, 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

____, ____'s Aunt and Representative, Claimant

____, ____'s Sister

Steven Brady, Acting Program Coordinator, MR/DD Waiver Program (By Telephone)

Linda Workman, Psychologist Consultant, Bureau for Medical Services (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 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:

D-1 Notice of Denial dated 1/6/05

D-2 DD-2A, Annual Medical Evaluation

D-3 Comprehensive Psychological Evaluation (Triennial) dated 09/10/2004

D-4 DD-4, MR/DD Social History dated 09/05/2004

D-5 IEP [REDACTED] County

D-6 Information from [REDACTED]

VII. FINDINGS OF FACT:

1. On January 6, 2005, a Notice of Denial (D-1) was sent to the Claimant. This notice includes some of the following pertinent information:

Your Waiver Application is hereby denied

While Ms.____ has been diagnosed with autism, her degree of impairment has been consistently listed as high functioning. Documentation submitted for review does not support the presence of substantial adaptive deficits in three or more of the seven life areas identified for waiver eligibility which are applicable to Ms.____'s status as a child.

2. The Department stipulated that the Claimant has an eligible diagnosis, Autism, but contends that the Claimant does not exhibit substantial adaptive deficits (substantial limitations associated with the presence of autism and therefore does not meet level of care criteria necessary in establishing medical eligibility.
3. The Department reviewed the Claimant's functionality in the seven major life areas and found no deficits.
4. The medical, psychological and other reports submitted consistently describe the Claimant as high functioning. The Claimant scores in the low average range of intelligence and does not exhibit mental retardation. The autism must be severe in nature. The medical evaluation (D-2) was essentially a normal physical and neurological exam. There were no problems noted with nobility, continence, feeding, requires assistance with personal hygiene (claimant eight years old at the time), The physician wrote high functioning autism with behavior disorder. Previous psychological testing showed an overall IQ of 85. The current psychological shows a diagnosis of high functioning autism with behavior disorder. The Claimant is fully ambulatory, continent of bowel/bladder, can undress independently and dress with verbal prompts, drinks and eat and bathe independently. She can express her wants and needs clearly, The ABS scores did not compute to eligible scores for the MRDD Program. The Social History shows the claimant is in a regular classroom. She needs verbal prompts to complete chores. The IEP shows she completes assignments when she cooperates. She can perform basic addition and subtraction. She can do well on spelling tests when she studies her words. She has a huge functional vocabulary. It was found the claimant did not meet the criteria in any of the major life areas. . .
5. Testimony received on behalf of the Claimant revealed that pictures are used to help her use the bathroom, wash her hands and dress. The family has struggled to make the Claimant a member of the community. She can dress herself although tags may be out.
6. 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 (Revised October 1, 2004).

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).
- Economic Self-Sufficiency

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. The Claimant has a program qualifying diagnosis of Autism..
2. The evidence fails to demonstrate that the Claimant exhibits substantial adaptive deficits in three (3) or more of the seven (7) major life activities, as required by policy.
3. Testimony received on behalf of the Claimant does not clearly demonstrate any changes to the conclusions reached by the Department.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the MR/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 5th Day of October, 2005

State Hearing Officer