



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
State Capitol Complex, Building 6 Room 817-B
Charleston, WV 25305

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 11, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 23, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the MR/DD Home & Community-Based Waiver Services 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 Services 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 both a diagnosis of mental retardation and/or a related condition(s), 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 Services Policy Manual)

The information submitted at your hearing reveals that you do not meet the required Level of Care criteria necessary in establishing medical eligibility for the Title XIX MR/DD Home & Community-Based Waiver Services Program.

It is the decision of the State Hearing Officer to uphold the Department's proposal to terminate your benefits under the MR/DD Home & Community-Based Waiver Services Program.

Sincerely,

Erika H. Young
State Hearing Officer
Member, State Board of Review

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

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

NAME _____

ADDRESS: _____

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 10, 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 convened on April 23, 2004 on a timely appeal filed September 22, 2003. The hearing had originally been scheduled for January 7, 2004, but was rescheduled at the request of the Claimant.

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/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

_____, Claimant's mother

_____, QMRP, Heathways

_____, Supervisor, _____ Apartments

III. (Continued)

██████████ substitute Case Manager, Healthways
██████████ day treatment, ██████████ County Opportunity Center
██████████ RN, Healthways
Susan Treen, MR/DD Program Operations Coordinator, BMS, participating telephonically
Richard Workman, Psychologist Consultant, BMS, participating telephonically

Presiding at the hearing was Erika H. Young, 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 meet the required medical criteria necessary to establish eligibility for the MR/DD Waiver Program.

V. APPLICABLE POLICY:

West Virginia Title XIX MR/DD Waiver Home & Community-Based Services Handbook

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Notice of MR/DD Waiver Program service termination dated August 28, 2003
- D-2 Psychological Evaluation Update dated May 20, 2003
- D-3 Healthways QMRP's Residential Evaluation dated May 13, 2003
- D-4 WVDHHR Annual Psychological Evaluation dated October 24, 2003
- D-5 WVDHHR Annual Medical Evaluation dated October 27, 2003
- D-6 WVDHHR Annual Medical Evaluation dated June 5, 2002
- D-7 Comprehensive Psychological Evaluation dated March 13, 2001

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. ██████████ testified that, during the re-evaluation process, documentation indicated the Claimant had never met eligibility criteria for the MR/DD Program and had been approved originally in error.

VII. (Continued)

2. The Claimant received a letter from the Bureau of Medical Services dated August 28, 2003 (D-1) which states the following: "Your Waiver services have been terminated. Your application was denied because:
Review of the most current psychological evaluation (5-03) indicates that Ms. _____ adaptive skills have now developed beyond that which would require the intense level of training and support associated with an institutional setting. She no longer meets the eligibility criteria for services in the Title XIX MR/DD Waiver Program."
3. Mr. Workman referred to a Psychological Evaluation Update of May 20, 2003 (D-2) which indicates the Claimant has a full-scale IQ of 65, which is the upper limit of the mild range. Adaptive behavior scores noted on the document include: 144 for personal self-sufficiency, which Mr. Workman said falls in the very superior range; 119 for community self-sufficiency, upper limit of the above-average range; and 121 for personal-social responsibility, superior range. He said the update indicates the Claimant has an adaptive deficit in the area of basic academics, but manifests a wide range of adaptive skills in several other areas. The scores are outside the range for individuals who would require active treatment and are incompatible with an ICF/MR level of care.
4. Mr. Workman then cited the Healthways QMRP's Residential Evaluation completed on May 13, 2003 (D-3). The evaluation indicates the Claimant assists at _____ Nursing Home and Mr. Workman said it would be unusual for someone requiring an ICF/MR level of care to assist others. He also said standard scores cited on the evaluation are above the scores of 55 and below typically required for MR/DD Program eligibility. The area of strength cited was in the communication domain. Under daily living, the evaluation states the Claimant is able to complete all personal hygiene skills, has dressing/undressing skills, has telephone skills, can order in a restaurant and completes housecleaning skills at _____. The Claimant assists residents with shopping, laundry and chores, pays her bills from her checking account with assistance in balancing the account, socializes independently with friends and initiates social communication. Mr. Workman said these skills are well developed and not typical of an individual requiring an institutional level of care. Although the Claimant does require prompting in some areas, Mr. Workman explained that prompting is not considered active treatment.
5. Referring to the October 24, 2003 Annual Psychological Evaluation (D-4), Mr. Workman pointed out the Claimant graduated from _____ County High School and attends the _____ County Opportunity Center two days per week where she works as a staff's aide in supported employment. The prior psychological testing segment of the document lists scores in the mild range of mental retardation. The evaluation lists the Claimant's K-Bit scores as an IQ of 71 on vocabulary, an IQ of 72 on matrices, and an overall IQ score of 68, which Mr. Workman

VII. (Continued)

said is at the very upper limit of the mild range and does not reflect a need for an ICF/MR level of care. Mr. Workman added that adaptive behavior standard scores on the evaluation are lower than those listed on the May 13, 2003 evaluation and, therefore, seem inconsistent.

6. Mr. Workman referred to the Annual Medical Evaluation of October 27, 2003 (D-5) which indicated the Claimant evaluated within normal limits. No areas requiring special care or therapies were noted. While noting the Claimant does require prompting and guidance, Mr. Workman said her mild delays are incompatible with a severe and chronic disability.
7. The Claimant's mother, _____, testified that the Claimant has learned to complete several activities since she has been receiving services under the MR/DD Program.
8. _____ said the Claimant has needs in many areas and he believes that justification exists for active treatment. He said the Claimant needs to continue developing skills and will regress if program services are terminated.

CONCLUSIONS OF LAW

1. MR/DD Policy Manual, Chapter 1 provides the following information concerning medical eligibility for the MR/DD Waiver Program:
 - I. Level of care Criteria for medical eligibility
 - A. 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 conditions(s), 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).
 - B. The following list includes some examples of related conditions. This list does not represent all related conditions.
 1. Autism or Pervasive Developmental Disability, NOS
 2. Spina Bifida
 3. Cerebral Palsy
 4. Tuberous Sclerosis

VII. Conclusions of Law (Continued)

5. Traumatic Brain injury and/or Spinal Cord injuries (occurring during the developmental period).
- C. The evaluations must demonstrate that an individual has a diagnosis of mental retardation and/or a related condition which constitute a severe chronic disability which is:
1. Attributable to a mental or physical disability or a combination of both;
 2. Manifested before a person reaches twenty-two (22) years of age;
 3. Likely to continue indefinitely; and
 4. Substantially limits functioning in three or more of the following areas of major life activities;
 - a. Self-Care
 - b. Learning (functional academics)
 - c. Mobility
 - d. Capacity for Independent Living (home living, social skills, health and safety, community use, leisure)
 - e. Receptive and /or expressive Language
 - f. Self-Direction
 - g. Economic Self-sufficiency (Employment)
- D. Level of care determinations are made by the Office of Behavioral Health Services (OBHS) and the Bureau for Medical Services (BMS) based on the medical, psychological and social evaluations.
- E. Evaluations must demonstrate the need for an ICF/MR level of care and services. This is demonstrated by the individual's need for intensive instruction, services, safety, assistance and supervision to learn new skills and increase independence in activities of daily living. The level of care and services needed must be the same level which is provided in an ICF/MR facility.

VIII. DECISION:

Testimony revealed that, while the Claimant has certain difficulties, she does not exhibit deficits in three or more major life activities as required for MR/DD Waiver Program eligibility. Because it was not shown by a preponderance of evidence that the Claimant exhibits the required amount of deficits, it is the decision of the State Hearing Officer to uphold the Department's proposal to terminate the Claimant's benefits and services through the Medicaid, MR/DD Home and Community-Based Waiver Services Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29