



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
November 23, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your services under the MR/DD Home and Community-Based 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), and require the level of care and services provided in an Intermediate Care Facility for individuals with Mental Retardation and /or related conditions. (West Virginia Title XIX MR/DD Waiver Home & Community-Based Policy Manual, Chapter 1, Section I)

The information which was submitted at the hearing failed to demonstrate substantial limitations in 3 of the specified 7 categories which reveals that you do not currently require the level of care provided in an ICF/MR facility.

It is the decision of the State Hearing Officer to **uphold** the Department's determination to terminate benefits and services under the MR/DD Home and Community-Based Waiver Program.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Susan Hall, Office of Behavioral Health Services. MR/DD Program  
\_\_\_\_\_

## WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

\_\_\_\_\_,  
Claimant,

v.

Action Number \_\_\_\_\_

West Virginia Department of Health & Human Resources,  
Respondent.

### SUMMARY AND DECISION OF THE STATE HEARING OFFICER

#### I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 21, 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 hearing was held September 19, 2005 on a timely appeal filed May 2005. It should be noted here that services have continued pending a hearing decision. 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 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). 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

\_\_\_\_\_, father to claimant

\_\_\_\_\_

\_\_\_\_\_, uncle to claimant

\_\_\_\_\_, sister to claimant

\_\_\_\_\_, brother in law to claimant

\_\_\_\_\_, friend to claimant

Susan Hall, Director, MR/DD Waiver Program, Office of Behavior Health Services (by phone)

Linda Workman, Psychologist Consultant, Bureau for Medical Services (by phone)

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 agency was correct in their determination that the claimant does not meet the medical eligibility criteria for continued participation in the MR/DD Home and Community-Based Waiver Program?

### **V. APPLICABLE POLICY**

Title XIX MR/DD HCB Waiver Program Operations Manual, Ch 1, Sec I

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

E-1- WVDHHR MR/DD Policy Manual 500- 509.1

E-2- March 21, 2005 request \_\_\_\_\_

E-3- Demographics/Monitoring Status Report and Annual Medical Evaluation, 9/13/04

E-4- Psychological Evaluation, 10/4/04

E-5- Social Summary, 11/26/04

E-6- IEP, 1/11/05

E-7- Notification, 5/23/05

E-8- Psychological Evaluation, 7/18/05

### **VII. FINDING OF FACTS:**

- 1) On May 23, 2005, a Notice of termination (E-7) was sent to the claimant as a result of a recertification review. The basis of decision indicated that documentation "does not support the presence of substantial adaptive deficits in 3 or more of the 7 major life areas identified for Waiver eligibility".

- 2) A hearing was requested by the claimant May 2005 and this request was received by the Board of Review July 1, 2005
- 3) This request was received by the examiner July 6, 2005 and a hearing was scheduled for September 27, 2005. At the request of the agency, the hearing was rescheduled and held September 19, 2005.
- 4) Exhibits as listed in section VI above were accepted.
- 5) Testimony was heard from the individuals listed in section III above.
- 6) The agency acknowledged an eligible diagnosis- Pervasive Developmental Disorder.
- 7) The agency's psychologist reviewed the medical/social information. It was noted that many ABS scores are in the superior level. IQ score is 78 while eligible scores are usually below 55. The claimant exhibits adequacy in most activities of daily living. There is not a definitive plan or seeming need for active treatment. The agency's position is that claimant fails to meet program criteria in self-care, learning, mobility, language, self-direction, capacity for independent living or economic self- sufficiency.
- 8) Testimony offered on behalf the claimant reveals that the claimant needs assistance with homemaking tasks and chores. The claimant is an SSI recipient.
- 9) Exhibit E-3, the Annual Medical Evaluation of 9/13/04 reveals no functional areas requiring special care. The diagnoses set forth are Asperger's Syndrome, smoker, obesity and sinusitis.
- 10) Exhibit E-4, the Psychological evaluation of 10/4/04 provides diagnoses of - Pervasive Developmental Disorder and borderline intellectual functioning. No physical or sensory deficits are noted. The claimant is independent in self-help issues. Language- good comprehension, expresses self, responds appropriately. Exhibits a normal range of emotions. Enjoys video games. FSIQ 78- borderline range. ABS scores Part One Domain (MR norms) are superior or average in - economic activity, independent functioning, self-direction, vocational activity. Personal and community self-sufficiency are both in the superior range. The report notes- that scores on part 1 of the ABS suggest that in comparison to other MR the claimant's skills are superior.
- 11) Exhibit E- 8, the Psychological Evaluation of 7/18/05 provides diagnoses of Pervasive Developmental Disorder NOS, AD/HD , inattentive type, by history from Pervasive Developmental Disorder, Borderline Intellectual functioning. No sensory or physical deficits are documented. Largely independent in self –care. Language is clear and coherent. Interacts with others, attends church, and enjoys TV and music. FSIQ 69- borderline. Reading is at a 7:5 grade level, math 8:2 and spelling 6:8.
- 12) The claimant's representatives were granted a 30 day period to submit additional medical information. As of the date of this decision no further documentation has been made available to the examiner.

- 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. 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. The agency concedes an eligible diagnosis- Pervasive Developmental Disorder.
- 2) An eligible individual must possess substantially limited functioning in three or more of the designated major life areas.
- 3) Mobility - evidence reveals no physical impairment.
- 4) Self-Care- evidence reveals the claimant is independent.
- 5) Receptive/Expressive Language- from the evaluations submitted, speech is clear and coherent and comprehension is good.
- 6) Learning (functional academics) - Full scale IQ scores range from 78 to 69, both of which exceed the 55 threshold.
- 7) Self-Direction – ABS scores are in the average range. The claimant interacts with others and attends church. He enjoys video games, music and watching TV.
- 8) Capacity for Independent Living - ABS scores in Personal and Community Self-sufficiency and Independent Functioning are all in the superior range. When combined with his language, self care and mobility skills his capacity to live independently is evident.
- 9) Economic Self-Sufficiency – the claimant currently has no physical difficulties, has a good grasp of language, lives independently and possesses the intellectual ability to learn basic work skills. His ability for self-sufficient is realistic based on documentation presented.

## **IX. DECISION:**

After a thorough examination, of all evidence presented, it is the decision of the State Hearing Examiner to uphold the Department's proposal in termination of the claimant's medical benefits and related services under the MR/DD Waiver Program as set forth in the May 23, 2005 notification.

While it is clear that the claimant has some obvious challenges, evidence provided fails to support a finding that the claimant requires that *level- of- care* routinely provided in an ICF/MR facility. Evidence suggests his needs are more of a homemaking, chore service nature. The case management agency is encouraged to pursue services in these areas.

## **IX. RIGHT OF APPEAL**

See Attachment.

## **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

IG-BR-29

**ENTERED This 23<sup>rd</sup> Day of November 2005,**

---

**RON ANGLIN**  
State Hearing Examiner