



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, West Virginia 25305

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 4, 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

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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 4, 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 January 9, 2004.

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

_____, day treatment, Healthways

_____, Case Manager, Healthways

_____, RN, Healthways

Section III. (Continued)

██████████ QMRP, 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:

Department's Exhibits

D-1 WVDHHR Annual Medical Evaluation dated August 21, 2003

D-2 MR/DD Waiver Program Participant Monitoring Status Report dated September 12, 2003

D-3 Notice of MR/DD Waiver Program service termination dated December 15, 2003

D-4 WVDHHR Annual Psychological Evaluation dated October 31, 2003

D-5 WV Department of Health Individual Program Plan dated September 11, 2003

Claimant's Exhibits

C-1 Letters from _____, _____, _____, ██████████ and ██████████

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Claimant received a letter from the Bureau of Medical Services dated December 15, 2003 (D-3) which states the following: "Your Waiver services have been terminated. Documents submitted for review indicate that Ms. _____ no longer meets the eligibility criteria

Section VII. (Continued)

for participation in the Title XIX MR/DD Waiver Program as she no longer manifests substantial adaptive deficits.”

2. Mr. Workman referred to the Annual Medical Evaluation completed August 21, 2003 (D-1), noting no areas were determined abnormal. The evaluation indicates the Claimant is ambulatory, continent, feeds herself, is able to care for her own personal hygiene and is alert. No additional therapies were recommended for the Claimant and the diagnosis was listed as epilepsy, which would be an eligible condition for the MR/DD Program provided the Claimant had substantial delays associated with the condition.
3. Mr. Workman discussed the Annual Psychological Evaluation dated October 31, 2003 (D-4). The document states the Claimant was not accompanied to the evaluation by any staff members, which was positive for the Claimant as most individuals requiring an ICF/MR level of care would not have that ability, Mr. Workman said. In addition, the evaluation states the Claimant graduated from high school and had resided in [REDACTED] in a HUD apartment. She also completes janitorial work and works as an aide in supported employment. The Claimant, who was 51 years old on the date of the evaluation, had also been evaluated by a school psychologist at the age of 13 and scored an IQ of 76 on the Wechsler testing instrument, which Mr. Workman said is in the borderline range and would not have qualified her as having mental retardation. The Claimant is ambulatory, needs assistance to eat nutritiously and manage money, and can read at an elementary school level with a fair understanding of what she has read, which indicates she possesses functional academics. Her speech is understandable and she can express her basic needs and wants, which Mr. Workman said would not indicate a substantial delay.

The evaluation also states that the Claimant interacts satisfactorily with peers and staff, likes to bowl, play music, dine out and watch television. She also participates in Special Olympics. Mr. Workman said this indicates the Claimant has well-developed self-direction skills. The Claimant’s K-BIT scores were as follows: IQ of 82 on vocabulary; IQ of 75 on matrices; and overall IQ of 76, which is in the borderline range, according to Mr. Workman. Mr. Workman said mild mental retardation scores range up to 70, but the Claimant scored outside that range on two different testing instruments.

Referring to the Vineland Adaptive Behavior Scales, the Claimant’s daily living skills score was 104, with an age equivalent greater than 18 years and 11 months. Mr. Workman said that score indicates very well-developed daily living skills that do not require an ICF/MR level of care. In addition, he said the Claimant’s communication, socialization and adaptive behavior skills were in the mild range and incompatible with individuals having a severe and chronic delay. Mr. Workman said he is not denying the Claimant needs support, but that she does not require the level of active treatment required for the MR/DD Waiver Program.

3. The Individual Program Plan completed September 11, 2003 (D-5) indicates the Claimant is ambulatory, has good general health, verbally communicates her wants and needs, participates in social activities, is conscientious about completing work, assists at her sister's retail store and administers her prescriptions independently. She resides in a semi-independent living facility.
4. Ms. _____, the Claimant's mother, testified that the Claimant was diagnosed with cerebral palsy at birth, which had not been reflected in the Department's documentation. She said the Claimant lived "on the streets" before authorities brought her to [REDACTED]. She believes the Claimant has never lived properly on her own and voiced concern about what would happen to the Claimant should she be terminated from the Waiver Program.
5. [REDACTED] questioned the thoroughness of the medical evaluation. She noted the Claimant takes high blood pressure medication, but the physician did not test her blood pressure during the evaluation. She pointed out the Claimant has an irregular gait and she has attended to the Claimant in the aftermath of seizure activity. She also testified that the Claimant has made great gains, but that the improvements have occurred as a result of the Waiver Program. [REDACTED] also explained that the Claimant previously lived "on the streets," had a questionable choice of companions, did not take her medications properly and led a "very risky lifestyle." She said the Claimant has made a "complete turnaround" as a result of the Waiver Program and looks good on paper because of the hard work the Claimant and staff have completed. She believes the Claimant would regress if she is terminated from the program. For example, [REDACTED] said the Claimant has admitted she would get into a car with strangers, which indicates a propensity for poor decisions and judgment. The Claimant also exhibits problems with money management.

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
 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