



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton, WV 26354  
August 5, 2005

Joe Manchin  
Governor

Martha Yeager Walker  
Secretary

\_\_\_\_\_ for \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 17, 2005. Your hearing request was based on the Department of Health and Human Resources' action to terminate 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 revealed that while an eligible diagnosis was established, evidence failed to demonstrate substantial limiting adaptive functioning in 3 of the specified major life areas. It was found that your son's condition does not require the considerable degree of care and services that are ordinarily provided in an ICF/MR institutional setting.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their decision to terminate your MR/DD Waiver benefits as set forth in the April 30, 2004 notification.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Stephen Brady, Acting Program Coordinator, 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 Examiner resulting from a fair hearing concluded on August 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 was convened on June 17, 2005 on a timely appeal filed May 17, 2004. 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's mother

Stephen Brady, Acting Program Coordinator, 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 terminate the claimant's 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 Notification of termination, 4/30/04

E-1a Notification of termination, 5/3/04

E-2 DD-2A, Annual Medical Evaluation, 3/1/05

E-3 MR/DD Waiver Assessments, (Status Report) 4/8/04

E-4 Comprehensive Psychological Evaluation dated 3/16/04

E-5 Information and statements – [REDACTED] Co BOE

E-6 Psychological Evaluation, 3/6/02

Claimant's Exhibits:

C-1 Statements- \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, 1/05

### **VII. FINDINGS OF FACT:**

- 1) On May 3, 2004, a Notice of termination (E-1) was sent to the claimant. The basis of decision stated a lack of substantial deficit in 3 of 7 major life areas. A hearing was requested May 17, 2004. A second notification of termination was mailed to the claimant May 3, 2004 (E-1a). A second hearing request was received by the agency July 7, 2004. Requests were received by the examiner July 21, 2004 and a hearing was scheduled for January 26, 2005. The claimant requested a postponement and the hearing was rescheduled for and convened June 17, 2005.
- 2) Exhibits as listed in section VI above were accepted.
- 3) Testimony was heard from the individuals listed in section III above.

- 4) Exhibit E-2, Annual Medical Evaluation reveals no problem areas requiring special care. Recommends speech therapy. The diagnosis noted is Autism
- 5) Exhibit E-3, the Psychological evaluation of 3/16/04 provides diagnoses of Pervasive Developmental Disorder (NOS) and AD/HD, combined type (by history). Notes no physical deficits, needs some assistance with self care, language – mild delays. Notes IQ scores - full scale of 82, performance of 81 and verbal of 85. ABS (Part 1) standard scores (non-MR norms) range from 4 to 13 with a 2 in independent functioning. Part 2 scores of 2 were in self –abusive behavior and social engagement. An ICF/MR “level of supervision and training” is recommended.
- 6) The agency’s psychologist reviewed the medical/social information. Pervasive Developmental Disorder is an eligible diagnosis for the program. The claimant’s diagnosis has changed from Autism to Pervasive Developmental Disorder (NOS) since approval. Physical skills are characterized as normal by examiners. A Full scale IQ of 82 would be characterized as low average. Eligible scores would usually be 55 or below. Eligible ABS standard scores (non-MR) would be 1. Indications are that the claimant has made significant progress. Concedes a substantial delay in “capacity for independent living”.
- 7) Testimony offered on behalf the claimant indicates that he requires a great deal of prompting with self-care. There are also safety issues – touching hot objects. He learns by repetition. He sometimes forgets people after a period of time.
- 8) 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. The agency concedes that the claimant’s current diagnosis is qualifying.

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 "Capacity for Independent Living". Testimony provides some suggestion that there is also a definable deficit in "Self-Care". Evidence failed to establish any additional qualifying deficits.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action in termination of benefits and services through the MR/DD Waiver Program as set forth in the April 30, 2004. Even if given the 2 areas of deficiency noted above, policy requires such deficits must total 3. In summery, the total of evidence considered fails to demonstrate that the claimant exhibits substantial adaptive deficits in three (3) or more of the seven (7) major life activities

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 5th Day of August, 2005**

---

**Ron Anglin**  
**State Hearing Examiner**