



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
January 6, 2006

Joe Manchin III
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 November 14, 2005. Your hearing request was based on the Department of Health and Human Resources' denial of 2:1 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. Some of these regulations specify as follows: (1). Prior authorization is required for payment of services which exceed the monthly ICF/MR cost of \$6400, entail nursing services or exceed service limits or exceptions to service. (2). Day Habilitation Program services consist of skills instruction, and supervision designed to assist an individual in achieving independence or maintaining current skills or ADL's. Habilitation services may be delivered in staff/member ratio of 1:1 – 1:6. (WV Title XIX MR/DD Waiver Policy § 509.1 -513.9)

The information which was submitted at the hearing revealed that you requested 2:1 services under the program to provide transfer capability.

It is the decision of the State Hearing Officer to **uphold** the Department's determination. The agency was in compliance with current policy and directives in denial of your current request.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

v.

Action Number 05- 6312- BOR

**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 January 6, 2006 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 held by conference call November 14, 2005.

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

_____, mother to claimant (by phone)

Stephen Brady, MR/DD Waiver Program, Office of Behavior Health 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 denial of the claimant's request for 2:1 services under the MR/DD Home and Community-Based Waiver Program?

V. APPLICABLE POLICY

Title XIX MR/DD HCB Waiver Program Operations Manual § 509- 513.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department Exhibits:

- E-1- MR/DD Policy Manual § 508- 513
- E-2- DD-1 MR/DD Waiver Assessment, 7/29/04.
- E-3- Notifications, 8/29/05, 4/22/05, 4/14/05, 8/13/05
- E-4- Request for 2:1, 4/13/05 – [REDACTED]

Claimant Exhibits:

- C-1- Claimant's 11/22/05 response to policy E-1 mailed to her 11/14/05.

VII. FINDING OF FACTS:

- 1) A notice of denial of requests for 2:1 services was issued April 22, 2005.
- 2) A hearing was requested by the claimant in a request dated July 20, 2005. This request was received by the Board of Review July 5, 2005
- 3) This request was received by this examiner August 3, 2005 and a hearing was scheduled for and held November 14, 2005. At the request of both parties the hearing was held telephonically.
- 4) Exhibits as listed in Section VI above were accepted. Exhibit E-1, agency policy, was mailed to the claimant following the hearing and a response received November 22, 2005 which was then provided by fax to the agency November 28 with no further response as of this decision.
- 5) In testimony, the agency asserted that 2:1 services are provided only in cases of severe, dangerous, maladaptive behavior.

- 6) Testimony offered on behalf of the claimant indicates that during the period 2:1 services were approved (3/1/05- 4/30/05) they proved inadequate as they were only for 2 hours per day. No alternative plan has been found. Personnel provided by the habilitation agency are not permitted to lift more than 50 lbs. The claimant weighs 100 lbs. Use of a Hoyler lift is not feasible. Services currently consist of 10 hours per day 5 to 7 days per week. Substantial informal assistance is provided by family members.
- 7) Exhibit E-3 contains a notification dated 4/22/05 stating: *2:1 is not an available resource for community day habilitation for transfers. The IDT members need to develop an alternative plan. The Prior Authorization committee approved this request previously in an attempt to aid in the planning process. As stated in the MR/DD Waiver manual, services provided must be cost effective not to exceed \$6400.00.* A notification dated 4/14/05 noted approval of 2:1 for transfers for the period 3/1/05- 4/30/05
- 8) Exhibit E-2 contains a Cost Estimate Worksheet indicating the monthly cost of requested services was \$11,474 as of 7/29/04
- 9) Agency policy (509.1) provides that prior authorization is required for payment of services which exceed the monthly ICF/MR cost of \$6400, entail nursing services or exceed service limits or exceptions to service.
- 10) Policy (513.9) reveals that Day Habilitation Program services consist of skills instruction, and supervision designed to assist an individual in achieving independence or maintaining current skills or ADL's. Habilitation services may be delivered in staff/member ratio of 1:1 – 1:6.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that prior authorization is required for payment of services which exceed the monthly ICF/MR cost of \$6400, entail nursing services or exceed service limits or exceptions to service. Submitted evidence reveals that the costs of requested services totaled \$ 11,474.
- 2) Policy reveals that Day Habilitation Program services consist of skills instruction, and supervision designed to assist an individual in achieving independence or maintaining current skills or ADL's (activities of daily living). Evidence reveals that the services requested by the claimant entail the use of an additional person for purposes of "transferring" the claimant rather than skills instruction or supervision in achieving independence in the ADL's.

- 3) Policy directs that Habilitation services may be delivered in staff/member ratio of 1:1 – 1:6. Requested services are of a 2:1 ratio, clearly outside the established directives of the program.

IX. DECISION/DISCUSSION:

After a thorough examination of all evidence presented, the decision of the Agency in denial of 2:1 services under the MR/DD (Day Habilitation) Program is **upheld**.

Based on evidence provided, the provision of 2:1 services for the sole purpose of facilitating bodily transfer of an individual is clearly not within the parameters of the Habilitation program. These additional requested services: result in costs exceeding the \$6400 threshold, exceed the 1: 1 – 1: 6 staff/member ratios, and fail to provide required training/skill acquisition aspects.

Existing policy simply fails to provide for the approval of 2:1 services based on the situation and circumstances as presented here.

The agency's 3/1/05- 4/30/05 approval, while alleged by the claimant to have been inadequate, provided an opportunity for the establishment of alternative arrangements. The failure of such attempt is regrettable.

The claimant's mother alleged that waiver program personnel are not permitted to lift in excess of 50 lbs and thus an additional person to aid in transfers was required as her son weighs 100 lbs. If in fact, this is the case, this lifting limitation would seem to present concern as a number of recipients with similar functional limitations would certainly exceed the claimant's modest weight. The agency may wish to pursue this issue with appropriate parties.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

IG-BR-29

ENTERED This 6th Day of January, 2006.

RON ANGLIN
State Hearing Examiner