



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 27, 2006

Ms. [REDACTED]

Case Name: _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the hearing held March 2, 2006. Your hearing request was based on the Department of Health and Human Resources' denial of MR/DD Waiver Services for _____.

In arriving at a decision, the State Hearings 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 Title XIX MR/DD Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

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 of daily living and;
- A need for the same level of care and services that is provided in an ICF/MR institutional setting. (PROGRAM ELIGIBILITY CRITERIA FOR THE MR/DD WAIVER PROGRAM Section 503 Medical Eligibility Criteria).

The information submitted at your hearing revealed: _____ does not meet the medical eligibility criteria for the MR/DD Waiver Program.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny services under the MR/DD Waiver Program.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Scott Brady, Program Manager – OBH&HF
Ms. _____, Mother

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,
Claimant,

v.

Action Number: 05-BOR-6346

**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 Officer resulting from a fair hearing concluded on March 27, 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 originally scheduled on February 2, 2006 on a timely appeal filed August 10, 2005. It must be noted that, any delay in scheduling the initial hearing was based on whether _____ would represent _____. On January 10, 2006, this State Hearing Officer was notified by an e-mail from Ms. _____, that _____ would represent _____ through an _____. The hearing was rescheduled at the request of _____ mother who was recovering from surgery. The hearing finally convened on March 2, 2006.

It should be noted here that the claimant was not receiving any benefits under the MR/DD Waiver Services Program. A pre-hearing conference was not held between the parties prior to the scheduled hearing.

II. PROGRAM PURPOSE:

The Program entitled MR/DD Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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.

III. PARTICIPANTS:

_____, Mother of _____

_____, Non-Attorney Advocate – _____

_____, Grandfather

_____, Grandmother

Dr. _____ Neuro-Psychologist*

Stephen Brady, Program Operations Coordinator - Title XIX MR/DD Home & Community-Based Waiver Services, Bureau for Behavior Health and Health Facilities

Linda O. Workman, M.A., Psychologist – Bureau for Medical Services

* Provided testimony by conference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does _____ meet the medical eligibility criteria for the MR/DD Waiver Services Program?

V. APPLICABLE POLICY:

PROGRAM ELIGIBILITY CRITERIA FOR THE MR/DD WAIVER PROGRAM
Section 503 Medical Eligibility Criteria.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Denial dated 02/03/05
- D-2 Notice of Denial dated 03/03/05
- D-3 Annual Medical Evaluation (DD-2A) dated 08/17/04
- D-4 Letter from _____ M. D., dated 10/15/04
- D-5 Comprehensive Psychological Evaluation (DD-3) dated 10/07/04
- D-6 Social History dated (DD-4) 01/06/05
- D-7 _____ Individualized Education Plan (IEP) dated 10/15/05
- D-8 Documentation submitted by D.E. A. F. dated 06/17/05
- D-9 _____ Individualized Education Plan (IEP) dated 05/12/05
- D-10 Autism Evaluation by the _____ Autism Educational Evaluation for _____ Schools dated 04/22/05
- D-11 Fourth page of a DD-2A dated 04/04/05
- D-12 _____ Occupational Therapy Evaluation dated 02/19/03
- D-13 _____ Psychological Evaluation Report dated 02/13/03
- D-14 Neuropsychological Consultation by _____ Ph.D., Pediatric Neuropsychologist dated 10/25/05
- D-15 Annual Medical Evaluation (DD-2A) dated 01/13/06

- D-16 DSM-IV 307.9 Communication Disorder Not Otherwise Specified
- D-17 Waiver Program Policy
- D-18 Mrs. Linda O. Workman's Closing Statement

Claimants' Exhibits:

- C-1 Letter from [REDACTED] M. D., Resident of Internal Medicine & Psychiatry –
[REDACTED]

VII. FINDINGS OF FACT:

1) Ms. _____, mother of _____, submitted an application packet to the Bureau of Behavioral Health and Health Facilities in January 2005. The purpose of the application was to determine if [REDACTED] would qualify for services under the Title XIX MR/DD Waiver Services Program. The Bureau for Medical Services reviewed documents submitted and determined that based on the information made available to them, [REDACTED] did not meet the medical criteria for the program.

2) The Bureau of Medical Services Policy Unit initially denied the application by letter dated February 3, 2005 (D-1). The letter stated in part,

“Your Waiver Application is hereby denied...Your application was Denied because: Additional information is requested. Please submit the most current psycho-educational assessments conducted by the school system.”

3) Additional information was submitted to the DHHR for review (D-2). On March 3, 2005, the DHHR issued another denial letter. It stated in part,

“Additional information has been received and reviewed. Unfortunately this documentation did not provide diagnostic clarity. The physician has not provided an eligible diagnosis of mental retardation or related condition on the DD-2A, nor has the psychologist offered an eligible diagnosis in the DD-3. There is a note from the treating psychiatrist, which indicates PDD-NOS, but this diagnosis is not offered on any other document. Mr. _____ apparently receives services in the school system on the basis of a learning disability. Review of Mr. _____'s functional status as it is indicated within the documents submitted for review does not support the presence of substantial adaptive deficits in 3 or more of the 7 major life areas identified for waiver eligibility which are applicable to a minor child.”

4) Mrs. _____ obtained a neuro-psychological evaluation dated October 25, 2005 in an effort to get a clearer diagnosis for (D-14). She sent a copy of the evaluation to the waiver office, and a third denial letter was sent dated 12/2/05 stating:

“The 10-25-05 Neuro-psychological Consultation submitted for review lacked psychometric data, which would enable the reviewer to make an eligibility determination. Specifically, the scores which resulted from the academic assessment and adaptive behavior assessment were not reported. Previously submitted test results did not meet eligibility criteria are now considered to be outdated (10-04). In addition,

the 8-12-04 DD-2A is now considered to be outdated and did not provide an eligible diagnosis from the examining physician.”

Psychometric data was submitted the next day. No further letters were issued by the DHHR.

5) Mr. Stephen Brady reviewed the Title XIX MR/DD Waiver Services Program policy. There were no questions for Mr. Brady. A copy of the policy was not included as part of the Department’s exhibits. The State Hearing Officer requested a copy to be provided to all parties after the hearing and all future hearings. It would be listed as Department’s Exhibit D-17. Mr. Brady did not provide a copy of the policy after the hearing. Ms. _____ provided a copy with her Closing Statement received on March 20, 2006.

6) Mrs. Linda O. Workman has been a Licensed Psychologist since 1981, and is also a Licensed School Psychologist. She has performed thousand of evaluations on school age children, participated in IEP meetings and workshops for teachers. Her office did all of the psychological evaluations for [REDACTED] Schools for seventeen years. She has also worked in five or six other counties.

Mrs. Workman’s Office, Psychological Consultation and Assessment, has been contracted by the Bureau for Medical Services which oversees the Title XIX MR/DD Waiver Services Program through the Office of Behavioral Health and Health Facilities, for approximately twenty years. One of her duties is to certify/determine eligibility for ICF/MR Group Homes. All of the group homes within the State of West Virginia are visited and recertified for their participation.

The MR/DD Waiver Program is an optional program in which the State may choose not to participate. The Federal Government allows States to serve people who would ordinarily be found in institutional settings within the community. The Federal Government establishes eligibility guidelines for use by the individual States. States may make the guidelines more restrictive if they choose but not less stringent. The Department refers to the Code of Federal Regulations to determine eligibility. In West Virginia, the Department has determined that in order to qualify, you need a level of mental retardation that would result in a need for institutional level of care.

There is a wide range of abilities associated with mental retardation. There are individuals diagnosed with mild mental retardation and some with severe and profound. The differences between the two individuals are very profound. Individuals with mild mental retardation often have driver’s licenses, work, and raise families. Those individuals with profound mental retardation are not able to attain such things. They require twenty-four hour supervision and training.

A diagnosis of mental retardation does not necessarily guarantee eligibility for this program, only to the point that MR requires an ICF/MR level of care. This is defined as an IQ of 55 which is three standard deviations below the mean which is 100. An average IQ is 100. A standard deviation is fifteen on a measure of intelligence such as the Wechsler Scale. The Department has determined based on documents provided and error of measurements, that is the level of disability to be considered. Eligible scores would fall in the range of 55 and below.

In the area of substantial adaptive deficits, if a person in West Virginia is diagnosed with mental retardation, they are compared with a sample population across the country who also have mental retardation. The Department is looking to see if the individual's functional abilities are similar to other people identified with mental retardation requiring this level of care.

When looking at non mental retardation norms, the Department is looking at scores below the first percentile. That is out of the mild range. In reviewing the ABS in this case, the Department is looking for less than one percent in the percentile column, and scores of one and two in the standard scores columns. Mrs. Workman then proceeded to address the documents used to determine their final decision.

7) The Annual Medical Evaluation (DD-2A) was completed on August 12, 2004 (D-3). There were no abnormal Physical or Neurological problems noted with the exception of "ADHD under the care of [REDACTED]"

The physician addressed the section "Problems Requiring Special Care" in the following manner: **Mobility** - Nothing Marked; **Continence Status** - Incontinent; **Feeding** - Nothing Marked; **Personal Hygiene** - Needs Assistance; **Mental and Behavioral Difficulties** - Alert, Confused/Disoriented, Irrational Behavior and, Needs Close Supervision.

The physician did not address a mental diagnosis. He certified [REDACTED] need for the Level of Care and Services Provided in an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions. The physician stated, "Dr. [REDACTED] will fill out mental - See attached letter."

8) Dr. [REDACTED], Assistant Professor of [REDACTED] submitted a letter dated October 15, 2004 (D-4). It stated,

"This is to document that I am treating _____ DOB 6/9/97 for Pervasive Developmental Disorder NOS, Obsessive Compulsive Disorder, Anxiety Disorder NOS and severe Attention Deficit Disorder. I feel that an aide in the school for is necessary for him to be able to be more successful in his education. I hope this is helpful to obtain an aide for _____."

The physician did not indicate an eligible diagnosis on the DD-2A, and Dr. [REDACTED] did not indicate a need for the Level of Care provided in an Intermediate Care Facility.

9) A Comprehensive Psychological Evaluation (DD-3) was conducted on October 7, 2004 (D-5). The Supervised Psychologist, [REDACTED] MA listed several psychotropic medications for _____. Further observations were made under the following Current Behaviors:

Psychomotor - _____ is independently mobile but his fine motor skills are delayed significantly.

Self-help - _____ is unable to complete daily living skills like: dressing, grooming and bathing himself without verbal prompting and supervision. Mrs. Workman testified that the Waiver Program is for individuals requiring active treatment rather than prompting.

Language – _____ is verbal and is able to express his wants and needs.

Affective – _____ has a history of significant behaviors. He will display several aggressive behaviors like hitting, kicking, pinching, biting and screaming...

Mental Status – Rapport was easily established and the client was friendly and cooperative. Speech was relevant and coherent. The client was oriented to person and place. Observed affect was appropriate and Observed mood was cheerful. Stream of thought was within normal limits. Content of thought was within normal limits. There were no obsessive-compulsive traits or phobias noted. Psychomotor activity was hyperactive. Judgment was severely deficient based on the Comprehension subtest of 3 on the WISC-IV. Insight was severely deficient, as the client did not understand [sic] the nature of his impairment and how it affects his daily activities. Immediate memory was within normal limits. The client was able to recall 4 out of 4 words immediately after presentation with out difficulty. Delayed memory was within normal limits as the client could recall 4 out of 4 words after a 15-minute delay. Attention and concentration was mildly deficient based on the Digit Span subtest score of 6 on the WISC-IV.

Others (social interaction, use of time, leisure activities) – _____ enjoys being involved in activities and being around others however, he is not aware of any environmental dangers or the appropriate way to interact with age appropriate peers. _____ knows boundaries and will often offend others with things he says.

_____ was given the Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV) to evaluate different aspects of intellectual functioning. He received a Full Scale Score of 80. This indicates _____ is not mentally retarded when compared to scores of 55 and below. The _____ subtest scores indicate _____ is much better than his hands and eyes. There were no scores within the subtests that indicate mental retardation or substantial delays.

_____’s Adaptive Behavior was measured by his mother’s completion of the AMAR Adaptive Behavior Scale-School, Second Edition on November 10, 2004. The Department is looking for a percentile rank of less than 1. The following scores were based on Non Mental Retardation norms:

<u>Domain</u>	<u>Percentile</u>	<u>Standard Score</u>
Independent Functioning	1	1
Physical Development	25	8
Economic Activities	1	5
Language Development	1	1
Numbers and Time	5	5
Pre/Vocational Activities	2	4
Self-Direction	1	2
Responsibility	1	2
Socialization	1	1

According to Mrs. Workman’s testimony, although _____ has a less than 1 percentile in Independent Functioning; Economic Activities; Language Development and; Socialization, it does not mean he is eligible.

The Psychologist's recommendations were:

Training – _____ needs occupational therapy.

Diagnosis:

Axis I: 299.80 Asperger's Disorder (Not an eligible condition under Title XIX Waiver Program. DSM-IV shows Asperger's Disorder is not associated with Mental Retardation. It does not result in substantial deficits in age appropriate care and adaptive skills).

314.01 Attention Deficit Hyperactivity Disorder, Combined type
Learning Disorder NOS (per client history)

Axis II: V71.09 No Diagnosis (Mental Retardation and Personality Disorders would be indicated here if present)

Axis III: Allergies, Kidney problems and Low blood sugar (per client's history). (Eligible Diagnoses would be Traumatic Brain Injuries, Cerebral Palsy or Seizure Disorders).

Placement Recommendations – _____ requires an ICF/MR level of care with 24-hour support, training, and supervision. Hence, the recommendation at this time is for the Title XIX Waiver services to preserve his present level of functioning and to prevent institutionalization.

10) The Social History (DD-4) was completed by a Licensed Social Worker on January 6, 2005. The following are highlights of the report:

Physical – Around two and a half to three he was diagnosed with Asperger's Syndrome and severe ADHD. At three years of age he began to worry constantly. _____ was prescribed an anti depressant at this time. He would worry about planes crashing in on him etc. and would have toileting accident.

Social – _____ always puts away his toys in a certain order and no one is allowed to touch or play with them except him.

Educational/Training – _____ is in the learning disable class at school (LD) for all subjects except for health and gym. The county school psychologist comes in once a week to see _____. He is a [sic] Autism Mentor.

Functional Status – _____ requires constant supervision in all he does because of safety issues. An ICF/MR level of care is required.

11) The Individualized Education Plan (IEP) was completed on October 15, 2004 by the _____ School System, when _____ was in the fifth grade (D-7). The highlights of the report state:

- _____ identifies and decodes words well. His word recognition level on the Wide Range Achievement Test (WRAT) on 4/7/04 is 5.5 (fifth grade and fifth month). He reads aloud and answers comprehension questions correctly.

- _____ reads, writes, orders, adds and subtracts whole numbers up to three digits, although he sometimes forgets to regroup in subtraction. He identifies, adds and subtracts money amounts and makes change to \$1.00. According to Mrs. Workman, many individuals who reside in ICF/MR group homes have training programs for years to teach how to make change for a dollar. _____ has already surpassed the level of training found in an ICF/MR group home.
- _____ spends 69% of his time in a Regular Education Environment and 31% of the time in a Special Education Environment. According to Mrs. Workman, most of the children in an ICF/MR facility would spend at least three quarters of their day in Special Education or self contained programs.

13) The Social Worker who completed the Social History (D-6) also completed the report for D.E.A.F., Inc. on June 17, 2005 (D-8). A summary of _____'s academic skills includes in part,

- Recognizes words at the 6.6 grade level on WRAT.
- Math grade level score on WRAT is 3.7
- Spelling grade level score on WRAT is 4.8.

According to Mrs. Workman, most children in an ICF/MR facility often cannot spell their name or recognize the letters of the alphabet.write their name.

14) An IEP completed on May 12, 2005 by the _____ Schools also reflected the information contained in the Social History, i.e., in April 2005 _____ was given a WRAT on which he achieved a word recognition grade level of 6.6, and he scored a 3.7 grade level in math (D-9)

15) The Autism Evaluation completed by the Department of Exceptional Children (DEC) Autism Educational Evaluation for _____ Schools on April 22, 2005, ruled out a diagnosis of Autism (D-10)

16) The fourth page of a DD-2A dated April 4, 2005 was not reviewed by the Department, in the absence of the total document (D-11).

17) The Summary Recommendations on the Psychological Report dated February 13, 2003 (D-13), states in part, "...He is currently functioning in the Low Average range with a Full Scale IQ of 87..." The Department is looking basically for scores from 55 and below.

18) A Neuropsychological Consultation by _____ Ph.D., Pediatric Neuropsychologist dated October 25, 2005 (D-14) did not provide the Department with the necessary information to determine eligibility. Dr. _____ assessed _____ to be in the Borderline range of cognitive abilities with a Full Scale IQ of 79. The Components of the Evaluation do not relate to the eligibility criteria for the Title XIX Waiver program.

Dr. [REDACTED] noted in the report that, "The ratings of _____'s behavior by his mother and himself revealed two differing views of him. _____'s rating of himself, possibly affected by his language deficits, suggested that he views himself in a manner highly similar to how others his age, view themselves."

DIAGNOSTIC IMPRESSION:

Axis I Mixed Expressive/Receptive Language Disorder
 Pervasive Developmental Disorder, NOS
 ADHD, Combined
 Enuresis, Encopresis

Axis II Borderline Cognitive Functioning

Axis III Allergic to Amoxicillin, Diabetic

Dr. [REDACTED] stated in part under the Summary and Recommendations, "Consequently, he appears to be developing at a rate consistent with his previous developmental rate, and therefore does not appear to have experienced any loss of abilities. Likewise, he does not appear to be functioning in the Mentally Retarded range..." Dr. [REDACTED] also recommended that _____ 'receive the Title XIX waiver as he appears to need an ICF/MR level of care with 24 hour support, supervision and training.'

19) An Annual Medical Evaluation was completed on January 13, 2006 by [REDACTED] MD (D-15). Dr. [REDACTED] indicated a diagnosis of Pervasive Developmental Disorder NOS; ADHD Combined; Enuresis; Encopresis; and Borderline Cognitive Functioning.

20) The diagnoses for _____ are conflicting. The DD-2A (Exhibit D-3) does not list a diagnosis and refers to a letter from Dr. [REDACTED] (Exhibit D-4) that lists one of the diagnoses as Pervasive Developmental Disorder NOS. The Psychological Evaluation dated October 7, 2004 (Exhibit D-5) lists the diagnosis as Asperger's Disorder. The Autism Educational Evaluation conducted on April 21, 2005 (Exhibit D-10), did not provide an eligible diagnosis. It merely ruled out _____'s participation in the Autism Program. Dr. [REDACTED] listed Pervasive Development Disorder, NOS as one of the diagnoses on his evaluation conducted on October 25, 2005.

21) The DSM-IV (Exhibit D-16) describes Pervasive Developmental Disorder Not Otherwise Specified (Including Atypical Autism) as:

This category should be used when there is a severe and pervasive impairment in the development of reciprocal social interaction with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities, but the criteria are not met for a specific Pervasive Developmental Disorder, Schizophrenia, Schizotypal Personality Disorder, or Avoidant Personality Disorder.

22) According to the DSM-IV, Asperger's Disorder is not considered to be a related condition for the Title XIX MR/DD Waiver Program for the following reasons: 1) It is not associated with intellectual impairment; 2) There is no clinically significant delay in language; 3) There is no delay in the development of age appropriate self-help skills, adaptive

behavior and curiosity about the environment. Attainment of functional academics is typically a problem.

23) PROGRAM ELIGIBILITY CRITERIA FOR THE MR/DD WAIVER PROGRAM
Section 503 Medical Eligibility Criteria:

Diagnosis

- Must have a diagnosis of mental retardation, which must be severe and 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 and chronic disability with concurrent substantial deficits.
 - Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the MR/DD Waiver Program include, but are not limited to, the following:
 - * Any condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons
 - * Autism
 - * Traumatic brain injury
 - * Cerebral Palsy
 - * Spina Bifida
 - * Tuberous Sclerosis
 - Additionally, mental retardation and/or related conditions with associated concurrent adaptive deficits:
 - * Were manifested prior to the age of 22, and
 - * Are likely to continue indefinitely.

Functionality

- Substantially limited functioning in three or more of the following major life areas: (Substantial limits is defined on standardized measures of adaptive behavior scores three (3) standard deviations below the mean or less than 1 percentile when derived from non MR normative populations or in the average range or equal to or below the seventy fifth (75) percentile when derived from MR normative populations. The

presence of substantial deficits must be supported by the documentation submitted for review, i.e., the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)

- Self-care
- Receptive or expressive language (communication)
- Learning (functional academics)
- Mobility
- Self-direction
- Capacity for independent living (home living, social skills, employment, health and safety, community use, leisure).

Active Treatment

- Requires and would benefit from continuous active treatment.

Medical Eligibility Criteria: Level of Care

- 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 of daily living
 - A need for the same level of care and services that is provided in an ICF/MR institutional setting.

The applicant, his/her family, and/or legal representative must be informed of the right to choose between ICF/MR services and home and community-based services under the MR/DD Waiver Program, and informed of his/her right to a fair hearing (Informed Consent, DD-7).

VIII. CONCLUSIONS OF LAW:

1) PROGRAM ELIGIBILITY CRITERIA FOR THE MR/DD WAIVER PROGRAM Section 503 Medical Eligibility Criteria:

Diagnosis

- Must have a diagnosis of mental retardation, which must be severe and 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 and chronic disability with concurrent substantial deficits.

- Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the MR/DD Waiver Program include, but are not limited to, the following:
 - * Any condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons.
 - * Autism
 - * Traumatic brain injury
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 - * Spina Bifida
 - * Tuberous Sclerosis
- Additionally, mental retardation and/or related conditions with associated concurrent adaptive deficits:
 - * Were manifested prior to the age of 22, and
 - * Are likely to continue indefinitely.

Functionality

- Substantially limited functioning in three or more of the following major life areas: (Substantial limits is defined on standardized measures of adaptive behavior scores three (3) standard deviations below the mean or less than 1 percentile when derived from non MR normative populations or in the average range or equal to or below the seventy fifth (75) percentile when derived from MR normative populations. The presence of substantial deficits must be supported by the documentation submitted for review, i.e., the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)
 - Self-care -
 - Receptive or expressive language (communication) -
 - Learning (functional academics)
 - Mobility
 - Self-direction
- Capacity for independent living (home living, social skills, employment, health and safety, community use, leisure).

Active Treatment

- Requires and would benefit from continuous active treatment.

Medical Eligibility Criteria: Level of Care

- 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 of daily living
 - A need for the same level of care and services that is provided in an ICF/MR institutional setting.

The applicant, his/her family, and/or legal representative must be informed of the right to choose between ICF/MR services and home and community-based services under the MR/DD Waiver Program, and informed of his/her right to a fair hearing (Informed Consent, DD-7).

2) The documentation presented on behalf of _____ indicates behavior problems rather than mental retardation and/or related condition that would affect receiving active treatment in the major life areas i.e., Self-care; Receptive or expressive language (communication); Learning (functional academics); Mobility; Self-direction; and Capacity for independent living (home living, social skills, employment, health and safety, community use, leisure).

3) The Physician's and Psychologist's all recommended a need for ICF/MR care, but the documentation does not support _____ having 1) a diagnosis of mental retardation, which must be severe and chronic, in conjunction with substantial deficits (substantial limitations associated with the presence of mental retardation), and/or 2) A related developmental condition, which constitutes a severe and chronic disability with concurrent substantial deficits.

4) _____ does not meet the eligibility criteria for services under the Title XIX MR/DD Waiver Services Program.

IX. DECISION:

It is the decision of this State Hearing Officer to uphold the action of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of March, 2006.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer