



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin
Governor

Martha Yeager Walker
Secretary

June 7, 2006

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2006. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 manifested prior to the age of 22 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 Policy Manual, Chapter 502.1).

The evidence submitted at the hearing fails to verify that you were diagnosed with Mental Retardation prior to the age of 18 (as required by the DSM-4) or that you demonstrated substantial adaptive deficits within the developmental period (prior to the age of 22).

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their decision to deny your application for benefits and services through the MR/DD Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Stephen Brady, Acting Director, MR/DD Waiver Program
[REDACTED]

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

____,

Claimant,

vs.

Action Number: 05-BOR-6827

**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 June 7, 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 convened on April 5, 2006 on a timely appeal filed October 24, 2005.

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

_____, Claimant's Mother

Susan Hall, MR/DD Waiver Program Coordinator

Richard Workman, Psychologist Consultant, Bureau for Medical Services

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer 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 its action to deny the Claimant's application for 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 (effective July 1, 2005).

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments= Exhibits:

- D-1 Title XIX MR/DD Home and Community-Based Waiver Program Revised Operations Manual, Chapter 500-8
- D-2 Notice of Denial dated 8/15/05
- D-3 Correspondence dated July 1, 2005 from _____ to _____ (cover letter for the application packet)
- D-4 Annual Medical Evaluation completed on 3/31/05
- D-5 Table B-20, Social Adjustment Factor (Non-Mental retardation Norms), Table B-21, Personal Adjustment Factor (Non-Mental Retardation norms), Table B-19, Personal-Social Responsibility Factor (Non-Mental Retardation Norms), Table A-1, Normative Table for Part One Domains, Table A-2, Normative Tables for Part Two Domains, Table A-3, Normative Tables for Part one Factors & DMS-4 – Diagnostic Criteria for Mental Retardation.
- D-6 Psychological Evaluation dated 4/20/05
- D-7 Addendum to Psychological Evaluation dated 9/6/05.
- D-8 Social History dated June 16, 2005.

VII. FINDINGS OF FACT:

1. On August 15, 2005, the Claimant was notified via a Notice of Denial (Exhibit D-2) that his application for the MR/DD Waiver Program was denied. This notice includes some of the following pertinent information:

Your Waiver Application is hereby denied

Your application was denied because: Additional information is requested for further review. Please submit documentation which supports the presence of mental retardation with associated substantial adaptive deficits within the developmental period. Further information regarding Mr. ____'s functional status and the type of degree of assistance he provides for his mother is requested.

2. Testimony provided by the Department indicates that although additional information was requested in the denial notice, no additional information was provided until the Addendum to Psychological Evaluation (Exhibit D-7) was received on April 1, 2006 (3 days prior to the hearing).
3. Exhibits D-4 fails to identify physical or neurological abnormalities that would typically be associated with substantial adaptive deficits and further indicates that the Claimant is ambulatory, feeds himself, is able to perform personal hygiene himself and he is mentally alert.
4. Exhibit D-5 (Non-Mental Retardation Norms) is referred to in the Addendum to Psychological Evaluation which may be an attempt to address delays prior to the age of 22, however, school records, previous evaluations and supporting special education documentation is required to verify the existence of substantial delays within the developmental period. It is noted in Exhibit D-8, Social History, that the Claimant was in Special Education classes in school, however, it is unclear what services were provided.
5. Additional documentation was cited in Exhibit D-6 (original evaluation) by the Department to show that the Claimant does not currently exhibit substantial functional adaptive deficits in three or more of the major life areas, and Exhibit D-7 states on page 1 – "For the purpose of the original evaluation, adaptive living skills were scored utilizing mental retardation norms. Because of this, Mr. ____'s adaptive living skills appear to be superior. This is because in comparison to others with mental retardation, Mr. ____ exhibits a fair degree of independence in daily self-care tasks, and he exhibits few maladaptive behaviors." While a diagnosis of Mental Retardation (or a related condition) is required for eligibility, the individual must exhibit moderate level adaptive deficits. Additionally, the evidence fails to verify a diagnosis of Mental Retardation prior to the age of 18 as required by the DSM-4.

6. The DSM-4, included in Exhibit D-5, provides Diagnostic Criteria for Mental Retardation and states under section “C” - The onset is before age 18 years.
7. 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 Revised Operations Manual (Revised October 1, 2004).

The level of care criteria for medical eligibility is outlined in this chapter and reads as follows:

Diagnosis

- 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.
- 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).
 - Economic Self-Sufficiency

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 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. The DSM-4 provides the diagnostic criteria and specifies the onset of Mental Retardation is before age 18 years. Therefore, an individual cannot be appropriately diagnosed with Mental Retardation after the age of 18.

2. The policy and regulations that govern the MR/DD Waiver Program requires a diagnosis of Mental Retardation and/or a related condition. The evidence submitted to establish a program qualifying diagnosis of Mental Retardation was completed when the Claimant was 27 years old. While there is a reference to Special Education classes in the Social Summary, there is insufficient evidence to confirm a diagnosis of Mental Retardation prior to the age of 18.
3. The evaluations submitted fail to verify that the Claimant exhibited substantial adaptive deficits within the developmental period (prior to age 22) or that he currently demonstrates substantial adaptive deficits in three (3) or more of the seven (7) major life activities.
4. Whereas the evidence fails to satisfy the eligibility requirements in the MR/DD Wavier Policy Manual, the Department has acted correctly in denying the Claimant's application for benefits and services through the MR/DD Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the MR/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 7th Day of June, 2006

**Thomas E. Arnett
State Hearing Officer**