



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General
Board of Review

Walker
Governor

Martha Yeager

Secretary

PO Box 29
Grafton WV 26354
March 15, 2006

_____ for _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 5, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your child's 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. One of these regulations specifies 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. (MR/DD Waiver Manual § 503.1

The information provided failed to demonstrate substantial functional limitations in three or more of the designated major life areas, indicating that the level of care provided in an ICF/MR facility is not currently required.

It is the decision of the State Hearing Officer to **uphold** the Department's determination as set forth in the October 12, 2006 and January 8, 2007 notifications to terminate benefits and services under the MR/DD- Home and Community-Based Waiver Program.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Stephen Brady, Office of Behavioral Health Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

v.

Action Number 06- BOR- 3250

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 March 14, 2007 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 March 5, 2007 on a timely appeal filed October 23, 2006. It should be noted here that services have continued pending a hearing decision.

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:

_____, claimant

_____, father to claimant

Stephen Brady, MR/DD Program, Office of Behavior Health Services (by phone)

Linda Workman, Psychologist Consultant, Bureau for Medical 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 determination that the claimant does not meet the medical eligibility criteria for continued participation in the MR/DD Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

MR/DD Waiver Manual § 503.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits:

- D-1- MR/DD Waiver Manual Policy 503.1
- D-2- Notification, 10/12/06
- D-3- Annual Medical Evaluation, 6/30/06
- D-4- Psychological Evaluation, 11/11/05
- D-6- ABS-S: 2 Profile/Summary Form, 9/22/06
- D-6- Psychoeducational Evaluation, 9/16/03
- D-7- Speech/Language Evaluation Report, 9/16/05
- D-8- Psychological Evaluation, 11/20/06
- D-9- Individualized Education Plan, 10/19/05
- D-10- Psychological Evaluation, 1/29/07
- D-11- Notification, 1/8/07

VII. FINDING OF FACTS:

- 1) On October 12, 2006, a Notice of Termination (D-2) was sent to the claimant as a result of a recertification review. Additional documentation was submitted and a second termination notice issued January 8, 2007. The basis of that decision indicated that information provided “does not support the presence of substantial deficits as defined for Title XIX MR/DD Waiver eligibility in three or more major life areas.”
- 2) A hearing was requested by the claimant October 23, 2006. This request was received by the Board of Review November 6, 2006 and a hearing was scheduled for and held March 5, 2007.
- 3) Exhibits as listed in Section VI above were accepted.
- 4) Testimony was heard from the individuals listed in section III above. All persons giving testimony were placed under oath.

- 5) The agency's psychologist reviewed the medical/social information. Noted that the medical evaluation (D-3) indicates that all neurological areas as essentially normal. Under Problems requiring special care, the only area noted as requiring assistance is personal hygiene (bathing) and continence (night). All other areas are normal. Prognosis is good. Diagnoses are ADHD and Pervasive Developmental Disorder. PDD is a potentially eligible diagnosis – if severe. The Psychological evaluation (D-4) notes child is in 2nd grade with grades of at least B. Gross and fine motor skills are acceptable. Receptive language skills are good and expressive skills improved. Plays T-Ball, soccer and rides bike. Enjoys computer and movies. IQ: verbal 88, performance 99 and full scale- average. Diagnosis is Pervasive Developmental Disorder NOS which appears not severe. ABS scores (non-MR) (D-5) eligible scores would be less than 1 percentile. Scores are not that low and therefore not eligible. D-6 completed 9/13/03 confirms child has average intellectual functioning and his achievement was not deficient. Scores were in average range. D-8 reveals child is in 3rd grade and on the honor roll. Motor skills within normal limits. Occasional nocturnal incontinence, supervision with bathing. Language: receptive well developed, expressive continuing to improve. Diagnosis: Pervasive Developmental Disorder NOS.
- D-9 reveals child in regular classes 99% of time. D- 10 reveals that Vineland scores while low do not appear valid according to evaluator. In summery PDD (diagnosis) does not appear a severe condition based on child's functional level. In 6 functional areas agency unable to find any eligible categories.
- 6) Testimony offered on behalf the claimant suggests that the child appears better than he is. He still receives speech therapy. Feels that socially the child is still not up to his grade level. Child is currently is regular classes 100% of time.
- 7) Eligibility Criteria for the MR/DD Waiver Program are outlined in the MR/DD Waiver Manual Policy § 503.1
- 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** (functional academics), **mobility**, **self-direction**, and **capacity for independent living**.
 - 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) An eligible individual must possess substantially limited functioning in **three** or more of the following designated major life areas.

- 2) Mobility - evidence reveals no physical impairment. No substantial deficit found
- 3) Self-Care- evidence reveals independence with the exception of occasional nocturnal incontinence and supervision with hygiene. No substantial deficit was apparent.
- 4) Receptive/Expressive Language- receptive language appears within normal limits. Speech therapy has improved expressive ability to what appears a not significantly impaired level. A finding of significant deficit in this area is not supported by documentation.
- 5) Learning (functional academics) - Full scale IQ scores are in the average range (90-109) which clearly exceed the 55 threshold. The claimant is in regular classes 100% of the day. No substantial qualifying deficit found.
- 6) Self-Direction – The claimant enjoys movies, computers, T-Ball, and soccer. Performance functioning is 99. No substantial qualifying deficit found.
- 7) Capacity for Independent Living - The claimant exhibits competence in all the activities of living utilized in the MR/DD eligibility evaluation. Documentation fails to provide any convincing evidence concerning the inability of the claimant to live independently in the future. The prognosis for his future independence appears optimistic. Significant deficit not found.

IX. DECISION

After a thorough examination of all evidence presented, it is the decision of the State Hearing Examiner to uphold the Department's proposal in termination of the claimant's medical benefits and related services under the MR/DD Waiver Program as set forth in the October 12, 2006 and January 8, 2007 notifications.

While it is clear that the claimant continues to have some obvious challenges, evidence provided fails to support a finding that the claimant requires that level-of-care routinely provided in an ICF/MR facility.

IX. RIGHT OF APPEAL:

See Attachment.

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

IG-BR-29

ENTERED This 15th Day of March 2006,

RON ANGLIN

State Hearing Examiner