



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 12, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 23, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate services under the Title XIX MR/DD Waiver Services Program.

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 MR/DD Home and Community-Based Waiver Program is based on current policy and regulations. Policy states that MR/DD cases, except SSI recipients, are redetermined financially once a year and a face-to-face interview is required. The Worker notifies the case manager when the MR/DD client becomes ineligible for any reason. (WV Income Maintenance Manual §17.32 and §17.36.)

The information, which was submitted at the hearing, revealed that the claimant failed to complete a scheduled face-to-face review interview. This prompted the Department to terminate benefits without any notification sent to the case manager of the claimant becoming ineligible.

It is the decision of the State Hearings Officer to reverse the action of the Department to terminate benefits without notifying the claimant's case manager of ineligibility.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Ann Hubbard, DHHR
[REDACTED]

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

_____,
Claimant,

v.

Action Number: 08-BOR-848

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 23, 2008 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 23, 2008 on a verbal appeal, filed in September 2007.

Let the record show that the Department did not process the verbal hearing request until February 11, 2008 when a second verbal appeal was received.

II. PROGRAM PURPOSE:

The program entitled MR/DD Home and Community-Based Wavier 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.

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 Witnesses:

, Claimant

[REDACTED]

Department's Witnesses:

Ann Hubbard, Income Maintenance Supervisor, DHHR

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct to discontinue financial eligibility for the Title XIX MR/DD Waiver Services Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual, §17.32 and 17.36

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Redetermination scheduling notice dated June 12, 2007
- D-2 Closure notice dated July 19, 2007
- D-3 WV I.M. manual §17.32
- D-4 Case Comments July 5, 2007 thru October 12, 2007 -provided subsequent to hearing

Claimant's Exhibits:

- C-1 Notice of ongoing Food Stamps following review dated August 1, 2007
- C-2 Notice of approval for QMB medical coverage dated August 1, 2007

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of MR/DD Waiver benefits in June 2007 when the Department mailed an appointment letter for review of her financial eligibility for the program. An appointment for a face-to-face interview was set for 7/5/07.

- 2) The appointment letter (Exhibit D-1) was mailed to the claimant at the address of her MR/DD Case Management office, [REDACTED]. A copy of this letter was not mailed to her MR/DD Case Manager. The letter stated in part: "Periodically, we need to make sure you are still eligible for the benefits you receive and are receiving all benefits for which you are eligible." This notice did not specify what programs were to be reviewed. An appointment date and time was set for July 5, 2007 at 9:40 for an in office interview.
- 3) The case management agency testified that they did not receive the appointment letter. They were not aware of the appointment and therefore did not bring the claimant in for her scheduled review.
- 4) The Department mailed a closure letter to the claimant at the [REDACTED] address on July 19, 2007. A copy of this notice was not mailed to the case manager. [REDACTED] was not aware of the appointment or the subsequent closure. The claimant's benefits stopped at the end of July 2007.
- 5) The Department testified that they have since reached an agreement with the case management office to mail letters to both the case manager and to the client in the future to ensure that the case management agency is aware of actions taken on the case.
- 6) The case management agency verbally requested a hearing in September 2007 when they became aware of the closure. The Department processed the request in February 2008 when a second verbal request was received.
- 7) On November 2, 2007, a representative from [REDACTED] brought the claimant in the DHHR office to reapply for financial eligibility for the MR/DD Waiver program. She was found to be eligible and benefits began in November. The Department refused to back date benefits to August 1, 2007 since there had been no face-to-face interview completed in July to determine financial eligibility.
- 8) The Department completed a review of the claimant's Food Stamp and QMB medical eligibility on July 31, 2007 and issued approval letters for both programs on August 1, 2007. Case comments for July 31, 2007 reports that a review was completed for QMB VIA INROADS. It stated that income was verified on DXRL and eligibility was confirmed for ongoing benefits. Case Comments do not indicate what prompted ongoing benefits for the Food Stamp program. The Food Stamp approval letter stated that benefits would remain the same. It can be assumed that the QMB INROADS received for QMB is what caused the review for Food Stamps. [REDACTED] Service Coordinator testified that she brought her client in for her Food Stamp review.
- 9) WV Income Maintenance Manual §17.32:

THE APPLICATION/REDETERMINATION PROCESS

The application/redetermination process is the same as for SSI –Related Medicaid in Chapter 1, with the following exceptions:

Eligibility begins on the latest of these dates:

-The physician's assessment date on the DD-2A; or

- The date financial eligibility is determined; or
- The date the client or his representative signs the Plan of Care.

MR/DD cases, except SSI recipients, are redetermined financially once a year and a face-to-face interview is required. Redeterminations are completed using the same criteria and procedures for applications.

10) WV Income Maintenance Manual §17.36:

NOTIFICATION

B. CASE MANAGER

The Worker notifies the case manager:

- When the MR/DD client becomes ineligible for any reason

VIII. CONCLUSIONS OF LAW:

- (1) Policy provides in §17.32 that a face-to-face interview is required for redetermination of MR/DD financial eligibility. It further states that eligibility begins the date that financial eligibility is determined. Policy, in §17.36 states, that the Worker is to notify the case manager when the MR/DD client becomes ineligible for any reason. Had the Department followed policy in §17.36 and notified the case manager the end of July when the claimant became ineligible, the case management agency would have followed through with the necessary face-to-face interview and benefits would have continued uninterrupted.
- (2) The Department clearly reviewed the client's income in July 2007 and determined no change was reflected in Food Stamp benefits. The November 2, 2007 reapplication for MR/DD benefits prompted the reinstatement of MR/DD benefits. It is clear that the claimant's income was within the income guidelines throughout the time of August thru October 2007.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate financial eligibility for services under the Title XIX MRDD Waiver Services Program for this claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of May 2008.

**Sharon K. Yoho
State Hearing Officer**