



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**

**Board of Review**  
P.O. Box 1736  
Romney, WV 26757

**Earl Ray Tomblin**  
**Governor**

**Michael J. Lewis, M.D., Ph.D.**  
**Cabinet Secretary**

May 17, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your stepson's hearing held May 9, 2012. The hearing request was based on the Department of Health and Human Resources' decision to deny his application for benefits and services associated with the Medicaid I/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 I/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 I/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 that 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 Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program]

Clinical information provided during the hearing revealed that your stepson does not meet the medical eligibility criteria required for participation in the Medicaid I/DD Waiver program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your stepson's application for benefits and services associated with the I/DD Waiver program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Jennifer Eva, APS Healthcare

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

**IN RE:**       -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-856**

**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 for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on May 9, 2012, on a timely appeal, filed February 27, 2012.

**II. PROGRAM PURPOSE:**

The Intellectual and Developmental Disabilities (I/DD) Waiver Program is West Virginia's home and community-based services program for individuals with intellectual and/or developmental disabilities. It is administered by the Bureau for Medical Services pursuant to a Medicaid waiver option approved by the Centers for Medicare and Medicaid (CMS). The I/DD Waiver Program reimburses for services to instruct, train, support, supervise, and assist individuals who have intellectual and/or developmental disabilities in achieving the highest level of independence and self-sufficiency as possible. The I/DD Waiver Program provides services in natural settings, homes and communities where the individual resides, works and shops.

**III. PARTICIPANTS:**

-----, Claimant's stepfather and authorized representative  
Jennifer Eva, Lead Service Support Facilitator-APS Healthcare  
Richard "Rick" Workman, Psychologist Consultant-Bureau for Medical Services

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to deny the Claimant's application for benefits and services associated with the Medicaid I/DD Waiver program.

**V. APPLICABLE POLICY:**

West Virginia Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 West Virginia Medicaid Regulations, Chapter 513 – Applicant Eligibility and Enrollment Process for I/DD Waiver Program
- D-2 Notice of Denial dated January 11, 2012
- D-3 Independent Psychological Evaluation dated December 29, 2011

**Claimant's Exhibits:**

- C-1 Individualized Education Program dated July 13, 2011
- C-2 Individualized Education Program dated April 23, 2012

**VII. FINDINGS OF FACT:**

- 1) On January 11, 2012, the Department issued the Claimant a Notice of Denial (Exhibit D-2) in response to his application for benefits and services associated with the Medicaid I/DD Waiver Services program. This notice documents the reasons for denial of the application as:

Your Waiver Application is hereby denied.

Your application was denied/terminated because documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility.

Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas-self-care, learning, self-direction, receptive or expressive language, mobility, and capacity for independent living.

- 2) There are four components to establishing medical eligibility for the I/DD Waiver program. These areas include: diagnostic, functionality, level of care and the need for active treatment. Richard Workman, Psychologist Consultant for the Bureau of Medical Services (BMS) reviewed the Independent Psychological Evaluation (IPE) (Exhibit D-3) completed on December 29, 2011, and contends that substantial delays concerning the Claimant's functionality were not identified on administered assessments, or supported by narrative documentation in three or more of six major life areas associated with I/DD Waiver eligibility.

As part of the IPE, the Claimant's mother completed the ABAS-II on behalf of the Claimant as a measure of her son's adaptive behavior. Mr. Workman indicated that standard scores of one or two on the administered test are considered eligible scores for medical eligibility purposes. The Claimant achieved the following scores in the six major life areas of functionality:

Receptive or Expressive Language (Communication)-the Claimant achieved a standard score of three, which is not considered an eligible score.

Learning (Functional Academics)-the Claimant achieved a standard score of 8, which is not considered an eligible score.

Self-Care-the Claimant achieved a standard score of 3, which is not considered an eligible score.

Self-Direction-the Claimant achieved a standard score of 4, which is not considered an eligible score.

Capacity for Independent Living-the Claimant achieved a standard score of 5 in Community Use, 5 in Home Living, 4 in Health and Safety, 4 in Leisure, and 4 in Social, all of which are not considered eligible scores.

Mobility-this life area was not assessed as part of the Claimant's adaptive behavior; however, the IPE documents the Claimant's mobility function as:

[Claimant] is mobile in his environment. During the review he was active moving about the room. He was able to manipulate objects. He is reported to be able to run and kick sometimes without falling and to be able to draw a straight line.

- 3) -----, the Claimant's step-father and authorized representative, asserted that his stepson exhibits delays in all six of the major life areas. ----- testified that his stepson cannot administer self-care, has no self-direction, and cannot walk up steps because of mobility issues. ----- indicated that his stepson has no capacity for independent living because he has no fear for his safety or the safety of his siblings. ----- indicated that his stepson has difficulties with his speech and cannot verbally relate pain, but can indicate pain with the use of an IPAD or other visual device such as a picture cue. ----- believes that his stepson is below average in learning because he cannot retain specific information. ----- provided Individualized Education Programs (Exhibit C-1 and Exhibit C-2) to demonstrate the

Claimant's skills associated with learning. These exhibits were entered into the record without objection by the Department; however, it shall be noted that these exhibits were not available for review by the Department in the determination of the Claimant's medical eligibility and are given limited weight in the hearing officer's decision.

- 4) West Virginia Medicaid Regulations, Chapter 513 - Applicant Eligibility and Enrollment Process for I/DD Waiver Services (D-1), includes the following pertinent medical eligibility criteria:

#### **513.3.2 Initial Medical Eligibility**

To be medically eligible, the applicant must require the level of care and services provided in an ICF/MR as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/MR provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/MR provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or 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.

The MECA determines the qualification for an ICF/MR level of care (medical eligibility) based on the IPE that verifies that the applicant has mental retardation with concurrent substantial deficits manifested prior to age 22 **or** a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. For the I/DD Waiver program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive I/DD Waiver Program Services, an applicant must meet the medical eligibility criteria in each of the following categories:

- a. Diagnosis;
- b. Functionality
- c. Need for active treatment.

#### **513.3.2.1 Diagnosis**

The applicant must have a diagnosis of mental retardation with concurrent substantial deficits manifested prior to age 22 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the I/DD Waiver Program include but are not limited to, the following:

- Autism
- Traumatic brain injury
- Cerebral Palsy
- Spina Bifida; and
- 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, and requires services similar to those required for persons with mental retardation.

Additionally, the applicant who has a diagnosis of mental retardation and/or a severe related condition with associated concurrent adaptive deficits must meet the following requirements:

- Likely to continue indefinitely; and,
- Must have the presence of at least three substantial deficits out of the six identified major life areas listed in Section 513.3.2.2.

#### **513.3.2.2 Functionality**

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- 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 and leisure activities).

Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75 percentile when derived from MR normative populations when mental retardation has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

#### **513.3.2.3 Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy and regulations that govern the I/DD Waiver program require eligible individuals to have a diagnosis of mental retardation, or a related condition, which constitutes a severe and chronic disability with concurrent substantial deficits in three of the six major life areas prior to age 22. Substantial deficits are defined on standardized measures of adaptive behavior scores as three (3) standard deviations below the mean or less than one (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 not only by the relevant test scores, but also by narrative descriptions contained in the documentation submitted for review. Therefore, an eligible score on administer test must first be identified and then supported by the narrative documentation.
- 2) Based on a review of the clinical information submitted during the hearing, the Claimant failed to meet the eligibility standard because substantial deficits were not support by relevant test scores in three of the six major life areas concerning the functionality criteria.
- 3) Whereas, the Claimant failed to meet the functionality criteria as set forth by governing policy, medical eligibility for participation in the Medicaid I/DD Waiver program cannot be established.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the Claimant's application for benefits and services under the Medicaid I/DD Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of May 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**