



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

June 11, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 7, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for the Children with Disabilities Community Services Program (CDCSP) for -----.

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 CDCSP is based on current policy and regulations. These regulations state that to be eligible for CDCSP, the child must require the level of care provided in a Nursing Facility (NF) or an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions (ICF/MR) or an acute care hospital or an approved inpatient psychiatric facility for children (CDCSP Manual §526). For your daughter's application, she was required to meet the level of care provided in an ICF/MR. For this program individuals must meet the diagnostic criteria for medical eligibility not only by relevant test scores, but also be supported by the narrative descriptions contained in the documentation (CDCSP Manual §526).

The information submitted at your hearing failed to establish that ----- met the medical criteria for CDCSP services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny -----'s application for CDCSP.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Linda Workman, PC&A Inc.

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1151**

**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 ----- held on June 7, 2012 by telephone. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This Fair Hearing was convened on a timely appeal, filed April 27, 2012.

**II. PROGRAM PURPOSE:**

The Children with Disabilities Community Service Program (CDCSP) provides medical services for disabled children who would otherwise be at risk of institutionalization so that they may reside in their family homes. The medical services must be more cost effective for the State than placement in a medical institution such as a nursing home, ICF/MR facility, acute care hospital or approved Medicaid psychiatric facility for children under the age of 21.

**III. PARTICIPANTS:**

-----, Witness for Claimant

Linda Workman, Consulting Psychologist, Bureau of Medical Services  
Mekell Golden, Program Manager, Bureau of Medical Services Long Term Care Project

Presiding at the hearing was Kristi Logan, 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 correctly denied Claimant for medical eligibility for CDCSP.

**V. APPLICABLE POLICY:**

Children with Disabilities Community Services Program Manual § 526.6

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

**Department's Exhibits:**

- D-1 Children with Disabilities Community Services Program Manual § 526.6
- D-2 Denial Letter dated March 21, 2012
- D-3 CDCSP Level of Care Evaluation (DD-2A) dated October 29, 2011
- D-4 Psychological Evaluation (DD-3) dated December 8, 2011

**VII. FINDINGS OF FACT:**

- 1) An application for CDCSP was made on Claimant's behalf under the ICF/MR level of care criteria. A denial letter was issued by the Department on March 21, 2012 which reads in pertinent part (D-2):

The CDCSP Initial Application is hereby denied. Based on the information submitted, eligibility is denied for the following reasons:

Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/MR Eligibility.

- 2) Linda Workman, consulting psychologist with the Bureau of Medical Services, testified to the denial of CDCSP services for Claimant. Ms. Workman testified that there are several steps that must be met in order to qualify medically for the CDCSP. She stated the first step involves an eligible diagnosis of mental retardation or related condition that is severe and chronic in nature. The second step involves having substantial adaptive deficits in three (3) or more of the six (6) major life areas: self-care, receptive or expressive language, functional learning, mobility, self-direction and capacity for independent living.
- 3) Ms. Workman reviewed the level of care evaluation (DD-2A) dated October 29, 2011, completed by Claimant's pediatrician. At the time of the evaluation, Claimant was fifteen (15) months old. According to the DD-2A, the physical and neurological

examination findings were normal. Claimant was ambulatory and alert, but needed total care in personal hygiene, assistance with eating and had limited communication skills. Claimant was given a diagnosis of Down's syndrome, the evidence supporting a diagnosis of mental retardation as well. A recommendation for ICF/MR level of care was given by Claimant's pediatrician (D-3). Claimant met the diagnostic criteria for CDCSP.

- 4) Ms. Workman reviewed a psychiatric evaluation (DD-3) dated December 8, 2011, administered to Claimant at age seventeen (17) months. The narrative section of the DD-3 reads that Claimant was ambulatory, able to finger-feed herself, participated in age-appropriate play with interests in pushing buttons and dancing and a delay in communication. Claimant was cooperative in areas of self-care (D-4).
- 5) The DD-3 reported Claimant's scores from the E-LAP, a developmental assessment for children, which was administered in September 2011. Ms. Workman stated eligible scores for the program using this assessment would be a 50% delay or more. Ms. Workman stated Claimant did not have any eligible scores in the major life areas from the E-LAP (D-4).
- 6) The evaluating psychiatrist who completed the DD-3 in December 2011, administered the Adaptive Behavior Assessment Scale (ABAS-II). Ms. Workman stated eligible scores on the ABAS-II for the program are a scaled score of a one (1) or a two (2), which is three (3) standard deviations below the mean or less than one (1) percentile when compared to the normative population. Claimant had eligible scores in communication and self-care (D-4).
- 7) The Developmental Profile-3 (DP-3) was also given to Claimant along with the ABAS-II. Ms. Workman stated an eligible score on this test is a standard score of fifty-five (55) or below, with the mean as one hundred (100). Claimant had eligible scores in cognitive and communication (D-4).
- 8) Ms. Workman concluded that Claimant had an eligible diagnosis of mental retardation and had substantial adaptive deficits in the areas of self-care and communication. However, one (1) additional deficit was required for Claimant to be medically eligible for CDCSP services.
- 9) -----, Claimant's mother, testified Claimant has participated in occupational therapy, physical therapy and developmental therapy through the Birth to Three program. Claimant has a heart murmur, which coupled with Down's syndrome will require a lifetime of medical care. ----- stated they do not have health insurance and will soon no longer qualify for WV CHIP. ----- requested Claimant be approved for CDCSP services.
- 10) Children with Disabilities Community Service Program Manual § 526.6 states:

MEDICAL ELIGIBILITY FOR ICF/MR LEVEL OF CARE

In order to be eligible to receive ICF/MR Level of Care, an applicant must meet the following medical eligibility criteria:

- \* Have a diagnosis of mental retardation and/or a related condition.
- \* Require the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded) as evidenced by required evaluations and corroborated by narrative descriptions of functioning and reported history. An ICF/MR provides services in an institutional setting for persons with mental retardation or related condition. An ICF/MR facility provides monitoring, supervision, training, and supports.
- \* Level of care (medical eligibility) is based on the Annual Medical Evaluation (DD-2A/CDCSP), the Psychological Evaluation (DD-3/CDCSP) and verification if not indicated in the DD-2B/CDCSP and DD-3/CDCSP, that documents that mental retardation and/or related conditions with associated concurrent adaptive deficits, are severe, and are likely to continue indefinitely. Other documents, if applicable and available, that can be utilized include the Social History, IEP for school age children and Birth to Three assessments.

The evaluations must demonstrate that an applicant has a diagnosis of mental retardation and/or a related developmental condition, which constitutes a severe and chronic disability. For this program individuals must meet the diagnostic criteria for medical eligibility not only by relevant test scores, but also be supported by the narrative descriptions contained in the documentation.

- \* Must have a diagnosis of mental retardation, with concurrent 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, if severe and chronic in nature, may make an individual eligible for the CDCSP (ICF/MR Level of Care) include, but are not limited to, the following:
  - \* Autism
  - \* Traumatic brain injury
  - \* Cerebral Palsy
  - \* Spina Bifida
  - \* Tuberous Sclerosis
- \* Any condition, other than mental illness, found to be closely related to mental retardation that results in an 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, mental retardation and/or related conditions with associated concurrent adaptive deficits that are likely to continue indefinitely.

- \* Must result in the presence of a [sic] least three (3) substantial deficits as that term is defined in Title 42, Chapter IV, Part 435.1010 of the Code of Federal Regulations (CFR). Substantial deficits associated with a diagnosis other than mental retardation or a related condition do not meet eligibility criteria. Additionally, an individual needing only personal care services does not meet the eligibility criteria for ICF/MR level of care.

### Functionality

Substantially limited functioning in three (3) or more of the following major life areas; (“substantially limited” is defined on standardized measures of adaptive behavior scores as three (3) standard deviations below the mean or less than (1) one percentile when derived from the non MR normative populations (when mental retardation has not been diagnosed) 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 not only the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological, the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)

- \* Self-care refers to such basic activities such as age appropriate grooming, dressing, toileting, feeding, bathing, and simple meal preparation.
- \* Receptive or expressive language (communication) refers to the age appropriate ability to communicate by any means whether verbal, nonverbal/gestures, or with assistive devices.
- \* Functional Learning (age appropriate functional academics)
- \* Mobility (motor skills) refers to the age appropriate ability to move one’s person from one place to another with or without mechanical aids.
- \* Self-direction refers to the age appropriate ability to make choices and initiate activities, the ability to choose an active lifestyle or remain passive, and the ability to engage in or demonstrate an interest in preferred activities.

- \* Capacity for independent living encompasses sub-components that are age appropriate for home living, socialization, leisure skills, community use and health and safety.

**VIII. CONCLUSIONS OF LAW:**

- 1) To qualify for CDCSP under the ICF/MR level of care, an applicant must have a diagnosis of mental retardation and/or a related condition, and require the level of care and services provided in an ICF/MR as evidenced by required evaluations and corroborated by narrative descriptions of functioning and reported history. The applicant must show that he or she meets the policy requirement of demonstrating three (3) substantial deficits out of the six (6) major life areas. "Substantially limited" is defined on standardized measures of adaptive behavior scores as three (3) standard deviations below the mean or less than (1) one percentile when derived from non MR normative populations (when mental retardation has not been diagnosed) 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 not only the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.
- 2) Claimant met the diagnostic criteria by having a diagnosis of mental retardation in conjunction with Down's syndrome. However, Claimant only received eligible scores in the areas of self-care and communication in the major life areas as reported on the medical documentation presented. Claimant needed one (1) additional substantial deficit to qualify for CDCSP services.
- 3) Claimant fails to meet the medical criteria for the CDCSP.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Claimant's application for CDCSP services.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11<sup>th</sup> day of June 2012**

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**Kristi Logan  
State Hearing Officer**