



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
March 4, 2005

Joe Manchin III
Governor

_____ for _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2005. Your hearing request was based on the Department of Health and Human Resources= determination in denying your application for the Children with Disabilities Community Services 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 Medicaid, Children with Disabilities Community Services Program is based on current policy and regulations. Policy states that the applicant must be a child who is up to, but not including, age 18. At the time of application, 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 Medicaid in- patient psychiatric facility for children under the age of 21. (West Virginia Income Maintenance Manual § 16.7 D)

The information which was submitted at your hearing reveals that specific criteria necessary in establishing medical eligibility for the Children with Disabilities Community Services Program was not met. Evidence failed to establish that your son currently requires the "level of care" provided in any of the above mentioned facilities.

It is the decision of the State Hearing Officer to uphold the determination of the Department of Health and Human Resources to deny your application for the Children with Disabilities Community Services Program as set forth in the August 31, 2004 notification. Evidence failed to support a finding that an institutional level of care is currently appropriate.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Susan Striar May, Bureau of Medical Services, Consultant

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

_____ for _____

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 1, 2005 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 January 19, 2005 on a timely appeal filed November 22, 2004. All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

Medicaid (Title XIX of the Social Security Act) is a federal/state funded program that provides health care coverage to low-income and medically needy West Virginians. The program was enacted into law by Congress in 1965. The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 allowed the State of West Virginia to elect the option of providing the Children with Disabilities Community Services Program (Federal title "Disabled Child In-Home Care Program") under Medicaid.

Children who are not eligible for Supplemental Security Income (SSI) due to their parents' income do not receive the medical card that is automatically assigned to a child who becomes eligible for SSI. The Children with Disabilities Community Services Program allows a child with a severe disability who is eligible to receive the level of care provided in a medical institution - but who does not receive SSI due to his/her parents' income - to receive Medical Assistance Only (MAO). MAO means the child receives a West Virginia medical card without receiving SSI or other benefits that automatically make the child eligible for a medical card.

To be eligible for the Children with Disabilities Community Services Program, the child must live at home with his/her biological or adoptive parents and have a program of community services developed by a health care provider (e.g.), behavioral health center, child care agency, early intervention program, etc.) to serve him/her. The level of services provided in the community must serve the child as well as or better than comparable services in a medical institution (i.e., nursing facility, ICF/MR, hospital or psychiatric facility) and must cost less than the same services delivered in a comparable medical institution.

III. PARTICIPANTS:

_____, claimant's mother
Susan Striar May, BMS, Consultant (by phone)
Presiding at the hearing was Ron Anglin, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant meets the required medical criteria necessary to establish eligibility for the CDCSP Program?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 16.7 D
Eligibility Guide for Children with Disabilities Community Services Program (9-1-94) D, I
Policy Memo, March 1, 1995- Eligibility Criteria for Nursing Home/Aged and Disabled Waiver:

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- 8/31/04 Memo to County office- DD-2A, medically ineligible
E-2- Program Eligibility Criteria
E-3- Neuropsychological Evaluation, 8/6/04
E-4- Psychoeducational Evaluation, 5/20/04
E-5- PT Evaluation, 7/19/04
E-6- OT Assessment, 7/04
E-7- Speech and Language Evaluation, 5/28/04
E-8- IFSP, Birth to Three, 10/8/03
E-9- Pre-School Observation Form, 5/20/04.
E-10- Office Visit report, 7/14/04
E-11- Annual Medical Evaluation (DD-2A) 7/28/04
E-12- Summary Report, 7/25/04
E-13- Parent Questionnaire, 5/20/04

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

(1) August 31, 2004 claimant notified of medical ineligibility for the CDCSP program. Hearing requested November 22, 2004. Hearing scheduled for and held January 19, 2005.

(2) During the hearing, exhibits as noted in section VI above were submitted.

(3) Susan Striar May noted from the Neuropsychological Evaluation (E-3) that distractibility may have caused an underestimation of true ability. Adaptive score composite 62- usually looking for scores under 50. Psychoeducational evaluation (E-4) notes problems with fine/gross motor skills. Followed directions and evidenced appropriate social interactions. Has no right side peripheral vision. Notes socialization, communication and daily living skills were rated as average when compared to others his same age. Discussed results of Battelle Inventory: Personal- Social equates to Self Direction in CDCSP policy. Age equivalent was 44 months. Child was 32 months old at the time. Adaptive Domain would equate to Self-Help. Age equivalent was 24 months. Motor - gross motor 9 months and fine skills 13. Agrees that he had issues in this category. Communication - this refers to expressive and receptive ability. Earned 21 month equivalent. Cognitive – age equivalent 15 months. Equates to learning. Notes subtest standard score was 84 and age equivalent was 25 months. Neither evaluation recommends ICF/MR level of care. Agrees as noted in PT Evaluation of 7/19/04 (E-5) that child has motor problems, especially on the right side. From OT Assessment 7/04 child offers some assistance in dressing, can remove shoes and socks, can wash hands, brush teeth, comb hair, wipe face and nose. Beginning to potty train- needs help on and off. Can feed himself with fingers and spoon. From E-7- Speech and Language report 5/28/04- child 32 months old at time. Receptive language age- 33 months and expressive age 22 months combined 27.5. From E-8, IFSP (25 months old) – (10/8/03) interacts well with others, learns quickly, scoots to get around, communicates with others, brushes teeth, washes his face, some limitation of arm movement, expresses emotions. 3/4/04 review shows – becoming more mobile, standing alone, and more movement. 6/9/04 review indicates improved functional abilities. From E-9, Pre-School Observation 5/20/04- difficulty with gross motor skills”. From E-10 Office Visit, 7/14/04- Development- “normal for modalities that not involve motor skills. He has about 100 words, some 2 word sentences, normally a happy kid, with adequate social interactive skills. From E-11, DD-2a medical evaluation- recommends ICF/MR level of care. Agrees he has some mobility problems but overall there are not 3 major life areas where he is significantly deficient to be eligible for the program.

(4) _____ notes that medical evaluation (E-11) recommends ICF/MR level of care. Evaluations were not completed specifically for the CDCSP program. Evaluations from school were usually based on short, 30 minute, interviews. Son sleeps in bed with rails. He cannot get out of bed but can fall out of it. Cannot roll from back to stomach. Can only walk when fully awake. Needs assistance to get to potty. He cannot sit up on potty. Notes from E-3 that son's MDI standard score was less than 50 which is less than the 1st percentile for those his age- 20 months. Motor skills 9 months and Communication 21 months equivalents. From E-6 notes difficulty getting on and off furniture and play equipment, inability to transition from sitting to standing. Is very unstable with walking.

They have declined a recommended walker or wheelchair as they felt it would better facilitate his walking and it has. He is in a day care situation where he can get special attention. Feels family support has enhanced his development. Child seems to understand what she says but cannot always express himself. He knows "hot" but will still touch. Can feed himself with left hand. Addressing 7 functional categories: Self-Care- son can brush teeth after she opens and puts paste on brush and turns on water. Cannot get to potty by himself. Cannot get from bed himself. Must completely dress him. He can get socks off but not on. He can feed himself but is extremely messy. He cannot name colors or understand shapes. Cannot count to five. When asked name –he says "me". He has a good memory for people and places. .

VIII. CONCLUSIONS OF LAW:

(1) West Virginia Department of Health & Human Resources Eligibility Criteria:

I. Level of Care Criteria

Medical eligibility will be determined by the Office of Medical Services (OMS), Long Term and Alternative Care Unit. Medical eligibility will be based on:

A. The applicant must be a child who is up to, but not including, age 18. At the time of application, 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 Medicaid in- patient psychiatric facility for children under the age of 21.

B. Level of Care determinations are made from a medical evaluation (Form DD-2A CDCSP) for applicants requiring NF or hospital level of care. For an applicant requiring ICF/MR or psychiatric facility level of care, the medical determination is made from a medical evaluation (Form DD-2A CDCSP completed within the previous ninety days) and current psychological and/or psychiatric valuations (completed within the previous six months for an initial application and within ninety days for a redetermination) appropriate to the applicant's age group. The evaluations must demonstrate that a child has a diagnosis of a severe, chronic disability which is:

1. Attributable to a mental or physical developmental impairment, or a combination of mental and physical developmental impairments for a child requiring an ICF/MR Level of Care or; Attributable to a physical impairment and/or medical condition for individuals requiring a NF or hospital Level of Care or Attributable to a psychological and/or psychiatric impairment and requiring in- patient acute care psychiatric services for individuals requiring a psychiatric facility Level of care;
2. Likely to continue indefinitely;
3. Substantially limits functions in three or more of the following areas of major life activities:
 - a. Self Care
 - b. Receptive or Expressive Language
 - c. Learning
 - d. Mobility
 - e. Self- Direction
 - f. Capacity for Independent Living
 - g. Economic Self- Sufficiency

C. The applicant must have a need for one of the medical facility levels of care described in I. A. and the corresponding services for an extended duration

IX. DECISION:

Policy states that in order to be eligible for the CDCSP Program, the applicant must be a child who is up to, but not including, age 18. At the time of application, 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 Medicaid in- patient psychiatric facility for children under the age of 21. Evidence must demonstrate that the child has a diagnosis of a severe, chronic disability which is: Attributable to a mental or physical

developmental impairment, or a combination of mental and physical developmental impairments for a child requiring an ICF/MR Level of Care or; Attributable to a physical impairment and/or medical condition for individuals requiring a NF or hospital Level of Care or Attributable to a psychological and/or psychiatric impairment and requiring in- patient acute care psychiatric services for individuals requiring a psychiatric facility Level of care. The condition must be likely to continue indefinitely and substantially limit functioning in three or more of the following areas of major life activities: Self Care, Receptive or Expressive Language, Learning, Mobility, Self-Direction, Capacity for independent living, and Economic Self- Sufficiency.

Evidence reveals that the applicant suffers from a severe chronic disability which is likely to continue indefinitely.

Assessing “substantial limitation” in the 7 specified areas of major life activities:

Mobility - evidence reveals significant deficit here. Difficulties appear in standing, transferring and walking. Gross and fine motor skills appear delayed especially on right side.

Self-Care - some difficulties are noted in this category due largely to motor skills. The OT Assessment of 7/04 notes the child assists in dressing by limb movement, washes hands, brushes teeth and combs hair. He is able to feed himself and is potty training. While there are obviously some challenges here, I am unconvinced that any deficits rise to the level of qualifying or are substantially out of line with children of a similar age.

Receptive and Expressive Language – scores on Speech and Language Evaluation (E-7) indicate language skills are without significant deficit. The child was 32 months old at the time of this evaluation and his receptive score was 33 months while expressive was 22 months and combined was 27.5 months. These scores fail to establish “substantial deficit” in this category.

Self-Direction skills appear in line with the child’s age group. This child earned well above average scores in social interaction and appears comfortable in social situations. He asks for help when needed and according to one report, served, “as a leader in peer relationships”.

Learning (functional academic) there appears delay here as evidenced by scores. Scores on 8/6/04 evaluation (E-3) (Bayley) reveal a standard score below 50- 1st percentile. The developmental age equivalent was 20 months. Cognitive scores from the 5/20/04 evaluation (E-4) when the child was 28 months were 16-18 months. Mother admits to his good memory as to people and places.

Capacity for Independent Living and **Economic Self-Sufficiency**. These categories entail some prediction of future events. While in some instances identifiable deficits and related physical and mental conditions may conclusively provide guidance in discounting the individual’s potential for independent living and economic self-sufficiency, I find evidence offered here fails to convincingly establish sufficient limitation in these categories to make a prediction of qualifying deficits possible.

It is the decision of the State Hearing Officer to uphold the determination of the Department of Health and Human Resources to deny the claimant=s application for the Medicaid CDCSP Home and Community Based Waiver Services Program as set forth in the August 31, 2004 notification. I find that evidence offered failed to establish the existence or potential of substantial functional limitations in at least 3 of the 7 specified areas of AMajor Life Activities@. Substantial limitation is currently found only in **Mobility** and possibly **Learning**. I cannot find that an institutional level of care is currently appropriate.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.