



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**235 Barrett Street**  
**Grafton WV 26354**  
March 28, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

\_\_\_\_\_ for \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 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 11, 2004 notification. Evidence failed to support a finding that an institutional "level of care" is currently appropriate for your son.

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 21, 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 February 28, 2005 on a timely appeal filed August 26, 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:** (all by phone)

\_\_\_\_\_, claimant's mother  
\_\_\_\_\_, claimant's attorney  
Susan Striar May, BMS, Consultant  
Kelly Ambrose, Asst Attorney General  
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 Criteria for Children with Disabilities Community Services Program

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

E-1- Notification, 8/11/04  
E-2- CDCSP policy  
E-3- Annual Medical Evaluation, 7/3/04  
E-4- Social History, 7/26/04  
E-5- Psychological Evaluation, 2/18/04  
E-6- Psychological Evaluation, 7/27/01  
E-7- Psychological Evaluation, 3/27/03  
E-8- IEP, 3/22/04  
E-9- CVRP Client Report, 10/13/04.  
C-1- Statement, Dr [REDACTED] 7/2/04  
C-2- Ophthalmology report, 4/9/04  
C-3- Pediatric/Genetic Report, 7/2/04

## **VII. FINDINGS OF FACT CONCLUSIONS OF LAW:**

(1) August 11, 2004 claimant notified of medical ineligibility for the CDCSP program. Hearing requested August 26, 2004 and received by HO September 29. Hearing scheduled for December 22, 2004. Claimant called Dec 21 and requested postponement as attorney unable to be present. Hearing rescheduled and held February 28, 2005.

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

(3) Susan Striar May testified that the claimant does not meet any of the 4 levels of care. He did not meet any of the necessary criteria. Notes from E-3 that no recommendations of level of care were made. Additionally, no eligible diagnosis was provided. From E-4, notes \_\_\_\_\_ is a little behind, rides motorcycle, plays with playstation and computer. There is no evidence of physical or psychological need for hospitalization. From E-5, IQ – WISCIII, 71 overall- borderline range of ability. Suggests verbal score of 88 may be better indication of his intellectual functioning- low average score. Is in appropriate grade for age. Eligibility requires a diagnosis of mild mental retardation. Claimant is closer to average IQ of children his age. Acknowledges he have vision difficulties. From E-6 suggests he is able to make age appropriate decisions. Again diagnoses offered are not program eligible. Notes from E-7 that verbal IQ was 90 – average range. Notes from E-8 that the only area of SE he is in is math and is in regular classes 89 % of the time.

From E-9 notes that he travels throughout the school, rides a dirt-bike. Travels independently in mall etc. Feels claimant does not have significant delays in major life areas to qualify for the program and has no eligible diagnosis. Is aware that he may be legally blind but feels fact in and of itself would not make him eligible. The possibility of dialysis in the future does not affect current eligibility.

(4) \_\_\_\_\_ testified that her son has Biedl Bardet syndrome and retinitis pigmentosa. She was referred to the program by Dr Swartz. He needs help in school with carrying vision equipment from class to class. Agreed there is no diagnosis of MR and he doesn't need hospitalization.

(5) Exhibit E-3, Medical Evaluation 7/30/04- under Conditions Requiring Special Care lists Personal Hygiene- needs assistance. Under Mental Behavioral Status- challenging behaviors. Fails to recommend any institutional level of care.

(6) Exhibit E-4, Social Summery 7/26/04- notes child likes to ride motorcycle and use playstation and computer

(7) Exhibit E-6, Psychological Evaluation 7/27/04 notes no productive language deficits. Can take care of most personal care needs; communicate basic needs, able to learn new skills, able to make age appropriate decisions.

(8) Exhibit E-5, Psychological Evaluation of 2/18/04- suggests verbal IQ 88 may be representative of intellectual functioning. Except for math most WIAT scores are in line with age and grade.

## **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.

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

**Mobility** - evidence fails to reveal significant deficit here. The medical evaluation and social information suggest that while he may possess some coordination issues he is fully ambulatory and in fact rides a dirt bike and can operate a “playstation”/computer.

**Self-Care** - some assistance is noted on the medical evaluation. However, he is able to feed himself and the evaluation of 7/27/04 notes that he is able to take care of most personal care needs. While there appear to be 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** – 7/27/04 evaluation notes “no productive language deficits”. 2/18/04 evaluation reveals verbal IQ of 88- low average range. This information and scores fail to establish “substantial deficit” in this category.

**Self-Direction** skills appear in line with the child's age group. The 7/27/05 evaluation suggests child is able to make age appropriate decisions.

**Learning** (functional academic) the evaluation of 2/18/05 indicates that IQ score of 88 may be a valid representation of intellectual function. He is in regular classes 89% of the time. Math appears to be his major educational challenge. Other scores are closely age/grade appropriate.

**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 11, 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@.

## **X. RIGHT OF APPEAL**

See Attachment.

## **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

IG-BR-29