



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
January 12, 2005

Bob Wise
Governor

Paul L. Nusbaum
Secretary

c/o _____

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 6, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny medical eligibility for the Children with Disabilities Community Services (CDCSP) 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 and benefit levels for the Children with Disabilities Community Services Program are determined based on current regulations. One of these regulations is to be eligible for the Children with Disabilities Community Services Program, 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 in-patient psychiatric facility for children (CDCSP Manual Section D, I).

The information which was submitted at the hearing revealed that _____ does not meet the medical criteria to be eligible for the Children with Disabilities Community Services Program as the documentation shows that he does not requires a level of care which is provided in an ICF/MR facility and does not have substantial deficits in the at least three (3) major life areas.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Children with Disabilities Community Services (CDCSP) Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Susan Striar-May, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**NAME:** _____**ADDRESS:** _____
_____**SUMMARY AND DECISION OF THE STATE HEARING OFFICER****I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 6, 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 originally convened on January 6, 2005 on a timely appeal filed November 3, 2004.

It should be noted here that any benefits under the Children with Disabilities Community Services Program (hereinafter CDCSP) have been discontinued pending the results of this hearing. It should also be noted that the hearing was convened in Charleston, WV at the request of the claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled CDCSP is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The Department has chosen the option of providing Medicaid to disabled children, up to the age of 18, who can receive necessary medical services while residing in their family (natural or adoptive) homes or communities. 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

1. _____, Claimant
2. _____, Claimant's mother.
3. _____, Claimant's grandmother
4. Susan Striar-May, Dept Hearing Rep.

Presiding at the hearing was Thomas M. Smith, 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 Department took the correct action to deny medical eligibility of _____ for the CDCSP Program.

V. APPLICABLE POLICY

WV Income Maintenance Manual Section 16.7 D.
 State Medicaid Regulations Section 3589.
 CDCSP Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Exhibit #1 Copy of denial letter 10-7-04.
 " #2 Copy of Program Eligibility Criteria (2 pages).
 " #3 Copy of Annual Medical Evaluation (4 pages).
 " #4 Copy of Cost Estimate Worksheet (2 pages).
 " #5 Copy of Psychological Evaluation 6-10-04 (11 pages).
 " #6 Copy of Notice of Eligibility Committee 9-13-04.
 " #7 Copy of IEP 10-1-04 (20 pages).
 " #8 Copy of Educational Physical Therapy Evaluation (3-3-04).
 " #9 Copy of IEP 2-14-03 (2 pages).
 " #10 Copy of IEP 9-29-04 (2 pages).
 " #11 Copy of IEP 10-1-04 (2 pages).
 " #12 Copy of Social History 9-15-04 (3 pages)/

Exhibit #C1-1 Copy of letter from _____ 1-5-05
 " #C1-2 Copy of letter from Special Education teachers 1-6-05 (2 pages).
 " #C1-3 Copy of word wall check (3 pages).
 " #C1-4 Copy of written statement and daily schedule (2 pages).

VII. FINDINGS OF FACT

1. A packet to determine medical eligibility for the CDCSP Program was submitted for the claimant and was denied on 10-7-04 as the psychologist and physician did not certify the claimant for ICF/MR level of care, there were not substantial deficits in three (3) or more major life areas, and the claimant was not at risk of institutionalization.

2. The annual medical evaluation (DD-2a)(Exhibit #3) does not show that the claimant requires ICF/MR level of care, psychiatric facility, nursing facility, or hospital care.

3. The Psychological Evaluation completed by [REDACTED] on 6-10-04 (Exhibit #5) does not recommend ICF/MR level of care and states that "it does not appear that an ICF/MR level of care is needed for _____ at this time" and also indicates that the claimant can ambulate and walk with bent posture, can dress himself and put shoes on, is independent with toileting, is verbal and speaks in sentences, enjoys social situations, that his adaptive functioning is generally average when compared to an MR/DD population and is below average in economic concepts and above average in use and understanding of speech, that ratings fell in the average range in all other areas, that when compared to non-MR population, the claimant is likely to not be demonstrating a significant level of impairment in adaptive functioning, that the IEP completed 10-1-04 states that the claimant will participate in the WV Measures of Academic Progress through standard conditions with accommodations and that he will be in regular education classes 55% of the time and in special education classes 45% of the time, that the IEP completed 2-14-03 showed that the claimant achieved his short-term objectives.

4. Ms. Striar-May testified that the claimant's mother submitted the package without another agency's assistance and that medical eligibility was denied as the documentation showed that he did not require ICF/MR level of care, that he did not have substantial deficits in three (3) or more major life areas, and he was not at risk for institutionalization.

5. Mrs. _____ testified that she believes that the claimant meets the criteria for the CDCSP Program, that he has substantial deficits in the areas of Self-Care, Language, and Mobility, that in the area of Self-Care, the claimant needs help bathing, getting dressed and undressed, tying his shoes, cutting up food, squeezing out toothpaste, combing his hair, zipping and unbuttoning his pants or shirts, cleaning eyeglasses, and putting on his hearing aids, that in the area of Language, the claimant has mild articulation difficulties, is still reading on a kindergarten level, receives speech therapy, and his VIQ and PIQ scores indicates moderate cognitive impairment, that in the area of Mobility, the claimant receives occupational and physical therapy, that he requires a therapist for fine and gross motor skills.

6. Mrs. _____ read "_____'s Daily Schedule" into the record to demonstrate the assistance he needs with daily activities.

7. Ms. Striar-May testified that the category of Language does not mean articulation or speech but refers to receptive and expressive language, that the claimant has mild articulation difficulties but it is not a deficit, that there is no disagreement that the claimant has substantial deficits with Mobility, but that in the area of Self-Care, while the claimant has some needs, he does not have substantial deficits in that area, and that, according to the Psychological Evaluation, he does not have substantial deficits in three (3) or more major life areas.

CONCLUSIONS OF LAW

1. WV Income Maintenance Manual Section 16.7, D states, in part:

"The Dept. has chosen the option of providing Medicaid to disabled children, up to the age of 18, who can receive necessary medical services while residing in their family (natural or adoptive) homes or communities. The medical services must be more cost-effective for the State than placement in a medical institution such as nursing home, ICF/MR facility, acute care hospital, or approved Medicaid psychiatric facility for children under the age of 21.

This coverage group allows children to remain with their families by providing medical services, in the home or community, that are more cost-effective than care in a medical institution. It also eliminates the requirement that the income and assets of parents and/or legal guardians be deemed to the children.

A child is eligible for Medicaid as a CDCSP client when all of the following conditions are met:

The child has not attained the age of 18;

The child has been determined to require a level of care provided in a medical institution, nursing home, ICF/MR, hospital, or psychiatric facility;

He is expected to receive the necessary services at home or in the community.

The estimated cost of services is no greater than the estimated cost of institutionalization;

The child has been denied SSI eligibility because the income and assets of his parent(s) were deemed to him, and as a result, the SSI income or asset eligibility test was not met.

The Long Term/Alt. Care Unit in the Office of Medical Services determines medical eligibility and notifies the county office and the case management agency of the decision in writing. Refer to Chapter 12 for details about determining medical eligibility."

2. State Medicaid Manual Section 3589 states:

"Under Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 (P. L. 97-248), States are allowed at their option, to make Medicaid benefits available to children (age 18 or under) at home who qualify as disabled individuals under Section 1614 (a) of the Social Security Act provided certain conditions are met, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. The specific statutory provisions establishing this option are contained in Section 1902 (e) of the Social Security Act.....

In order for a child to establish Medicaid eligibility under this option, determine that:

if the individual were in a medical institution, he/she would be eligible for medical assistance under the State plan for Title XIX;

the child requires a level of care provided in a hospital, skilled nursing facility, or intermediate care facility;

it is appropriate to provide the care to the child at home; and

the estimated cost of caring for the child outside of the institution will not exceed the estimated cost of treating the child within the institution.

Children meeting these standards would be eligible for Medicaid even though they were not receiving SSI cash assistance at home. Under the law these children are deemed, for Title XIX purposes only, to be receiving SSI, or a State supplemental payment. Of course, 209 (b) States which do not provide Medicaid to disabled SSI and State supplement recipients under age 19 may not take advantage of this option.

In determining whether the child requires a level of care provided in a hospital, skilled nursing facility or intermediate care facility, determine that the child requires the level of care appropriate to these facilities as defined in 42 CFR 440.10 (hospital), 440.40 (skilled nursing facilities) or 440.150 (intermediate care facilities).

3. CDCSP Manual Section D, I states, in part:

"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 evaluations....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;

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.

D. The applicant must have an Individual Program Plan (IPP) developed by an Interdisciplinary Team (IDT)...."

VIII. DECISION

Based on the evidence and testimony presented, I must uphold the action of the Department to deny medical eligibility for the CDCSP Program in this case. CDCSP Manual Section D, I, A states that the child must "require the level of care provided in.....an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions (ICF/MR)". Section D, I, B states that Level of Care determinations are made for applicants requiring ICF/MR or psychiatric facility level of care "from a medical evaluation (Form DD-2a CDCSP completed within the previous ninety days) and current psychological and/or psychiatric evaluations.....appropriate to the applicant's age group". The DD-2a completed 8-27-04 (Exhibit #3) is not marked to show that ICF/MR level of care is needed although CDCSP is marked as needed. The Psychological Evaluation completed 6-27-04 (Exhibit #5) does not state that _____ requires an ICF/MR level of care. The Psychologist (Penny Perdue) actually states that "it does not appear that an ICF/MR level of care is needed for _____ at this time". While the State Hearing Officer finds that the requirements in CDCSP Manual Section D, I, B are met in that (1) _____'s impairment is attributable to a mental or physical developmental

impairment for a child requiring an ICF/MR level of care and (2) the impairment is likely to continue, the State Hearing Officer is unable to rule that (3) the impairment substantially limits functions in three or more of the following major life activities, including (a) Self-Care, (b) Receptive or Expressive Language, (c) Learning, (d) Mobility, (e) Self-Direction, (f) Capacity for Independent Living, and (g) Economic Self-Sufficiency. The State Hearing Officer finds that the documentation, in particular the DD-2a (Annual Medical Evaluation) and DD-3 (Psychological Evaluation) do not show that the claimant meets the requirements for substantial deficits except in the area of Mobility. Therefore, the State Hearing Officer must uphold the action of the Department to deny medical eligibility for the CDCSP Program.

IX. RIGHT OF APPEAL

See Attachment

X. Attachments

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29