



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
May 10, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. & Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 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 criteria necessary in establishing medical eligibility for the Children with Disabilities Community Services Program were met. Evidence established that your child has substantial functional limitations in at least 3 of the 7 specified areas of AMajor Life Activities@.

and thus is medically eligible for participation in the Children with Disabilities Community Services Program.

It is the decision of the State Hearing Officer to reverse 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 July 19, 2004 notification.

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
BOARD OF REVIEW**

_____,

Claimant,

v.

Action Number: _____

**West Virginia Department of
Health and Human Resources.**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 9, 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 March 25, 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:

_____, claimant's father

_____, 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 Criteria for Children with Disabilities Community Services Program

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- Notification, 7/19/04

E-2- CDCSP policy

E-3- Annual Medical Evaluation, 1/13/04

E-4- Amended final page of E-3, 6/14/04

E-5- Psychological Evaluation, 6/22/04

E-6- IEP, 6/9/04

E-7- Social History, 3/2/04

E-8- Speech, Language and Hearing Services, Diagnostic Information, 5/14/03

C-1- UHC Rehab Report, 2003

C-2- Information from [REDACTED] Primary School- received 4/14/05 (faxed to DHHR 4/20/04)

VII. FINDINGS OF FACT:

(1) July 19, 2004 claimant notified of medical ineligibility for the CDCSP program. This notification, found the claimant ineligible based on a lack of 3 substantial deficits in major life areas and thus not at risk of institutionalization. Hearing requested August 26, 2004 and received by this HO February 4, 2005. Claimants' originally requested that hearing be held at BMS. Hearing scheduled for and held March 25, 2005.

(2) During the hearing, exhibits as noted in section VI above were submitted. Exhibit C-2 was received from the claimant April 14, 2005 (as agreed) and faxed to CDCSP April 20. Response from CDCSP received May 5, 2005 indicating no change in the agency's prior decision.

(3) Susan Striar May testified that the claimant does not meet the 3 of 7 substantial deficits in major life areas criteria and is not at risk of institutionalization. From E-5- notes no intellectual concerns but trouble writing due to trunk instability. Unable to speak until 2 1/2 years and receives speech therapy. Ambulates with walker. Needs help with Self Care- feeds self and drinks with considerable spillage. He is not toilet trained. Agrees Self Care is his area of greatest need and constitutes an area of substantial deficit. Notes speech is difficult to understand and he has speech therapy twice per week. Notes memory, and reality testing intact and thought processes within normal limits. Energy level is normal and he has a wide variety of interests. Self-direction: makes

friends easily, likes to draw and ride his pony, interested and considerate of others, initiates activities. ABS scores (non-MR norms) are mostly in at least the average range except self-care areas. Language issues concern articulation not receptive or expressive language. He has no cognitive issues. Appears he does well with a walker. Deficiencies in self-direction not evident. Notes from E-6 that child can feed himself and requires close supervision not to fall. Has needs in gross motor skills based on CP. E-7 social history- likes school and other children. Well adjusted and has no maladaptive behaviors. Notes from E-8 that delays are in articulation not receptive/expressive. Notes from ABS that language development scores are average.

(4) _____ testified that expressive language is the ability to communicate- to be understood. What her son says cannot be understood. Child has no problem with receptive language skills only expressive. Child has a lot of trunk instability. C-1 notes that while 4 years of age child has gross motor skills of an 11 month old. He can walk with walker 1-2 hundred feet but after that must use a wheelchair. He cannot stand by himself. He must be carried in and out of the home. He crawls around the home. He has fallen many times even while in the walker. Can write his name but with assistance. They encourage him to be involved in activities. He doesn't take much initiative in self direction. He cannot function well unless someone is with him. He cannot get out of bed in the morning.

(5) _____ testified child must be held when riding the pony. He cannot sit on the pony by himself. Questions his capacity and potential for independent living and economic self sufficiency.

VIII. CONCLUSIONS OF LAW:

(1) West Virginia Department of Health & Human Resources Eligibility Criteria (for CDCSP): In determining medical eligibility documentation must demonstrate that a child has a diagnosis of a severe, chronic disability which is: (1) Attributable to a physical impairment and/or medical condition for individuals requiring a NF or hospital Level of Care. (2) Likely to continue indefinitely. (3) Substantially limits functions 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, Economic Self- Sufficiency.

Evidence indicates that significant deficits exist in self-care, language (expressive), mobility, economic self-sufficiency and capacity for independent living.

IX. DECISION:

As provided in the July 19, 2004 notification, the agency found the claimant ineligible based on a lack of 3 substantial deficits in major life areas and thus not at risk of institutionalization. During the hearing, the agency conceded that documentation concerning Self- Care established substantial deficit in that area.

Assessing "substantial limitation" in the all 7 specified areas of major life activities:

Mobility – evidence reveals significant deficit here. As a result of CP, gross motor skills are severely impaired. Testimony reveals the child cannot stand alone and cannot ambulate far in a walker. He must be carried in and out of the home and cannot get out of bed independently. Fine motor skills also appear impaired in part because the child is unable to feed himself without significant spillage.

Self-Care – the agency concedes significant deficit in this category.

Receptive and Expressive Language – clearly the child exhibits articulation difficulties. The claimants argued that this problem is a matter of expressive language deficit and testified that their son cannot be understood. In the absence of policy further clarifying this issue, I am unconvinced that deficient articulation is not a matter of expressive language deficit and must therefore find deficit in this area.

Self-Direction skills appear in line with the child's age group.

Learning (functional academic) there appears no argument here that the child's learning capacity is currently without significant deficit.

Capacity for Independent Living and **Economic Self-Sufficiency**. These categories entail some prediction of future events. Based on the claimant's mobility, self-care and language issues, it appears that the claimant's potential independence in these 2 categories is highly questionable. Policy offers no guidance concerning the exclusion of these categories when evaluating younger children.

It is the decision of the State Hearing Officer to **reverse** 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 July 19, 2004 notification. I find that evidence established substantial functional limitations in at least 3 of the 7 specified areas of Major Life Activities.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

IG-BR-29

ENTERED this 10th DAY of May , 2005

RON ANGLIN
State Hearing Examiner