State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 7, 2005

Dr. _____ for
_____
_____
_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 3, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny you application for Medicaid, Children with Disabilities Community Services Program (CDCSP) based on cost feasibility.

In arriving at a decision, the State Hearings 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 Children with Disabilities Community Services Program (CDCSP) is based on current policy and regulations. Some of these regulations state that services are restricted by limits as set in the Medicaid State Plan. Services must be cost-effective when compared to the cost of facility-based care. [WV DHHR Eligibility Guide for Children with Disabilities Community Services Program (September 1, 1994), West Virginia Income Maintenance Manual, Chapter & 1.19, 42 U.S.C § 139a(e)(3) and 42 CFR § 435.225.]

The information submitted at your hearing reveals that the in-home medical expenses submitted to determine cost feasibility exceeds the established standard for hospital care.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for Medicaid coverage through the Children with Disabilities Community Services (CDCSP) Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michael Miskowiec, Esq.
Kelly Ambrose, Esq., Assistant AG's Office

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 05-BOR-6014**

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 concluded on December 7, 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 scheduled for August 24, 2005, and again on September 29, 2005 but convened on November 3, 2005 on a timely appeal, filed June 7, 2005.

II. PROGRAM PURPOSE:

The Program entitled Children with Disabilities Community Services Program (CDCSP) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Children with Disabilities Community Service Program 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:

_____, Claimant's mother / Guardian
[redacted] Esq.
Kelly Ambrose, Esq., Assistant AG's Office, BMS (by phone from BMS)
Susan Striar-May, Consultant, BMS (by phone from BMS)
Dr. Sandra Joseph, M.D., BMS (by phone from BMS)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in their action to deny the Claimant's application for Medicaid through the CDCSP Program.

V. APPLICABLE POLICY:

WV DHHR Eligibility Guide for Children with Disabilities Community Services Program (September 1, 1994)
West Virginia Income Maintenance Manual, Chapter 1.2 & 1.19
42 U.S.C. 139a(e)(3)
42 CFR 435.225

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 WVDHHR Eligibility Guide for Children with Disabilities Community Services Program (September 1, 1994).
D-2 Cost Estimate Worksheet for CDCSP dated 1/11/05.
D-3 Memorandum dated 2/23/05 from _____ to _____.
D-4 Interim Healthcare Load Form.
D-5 Correspondence from _____ dated 2/28/05 with additional information submitted for review.
D-6 Memorandum dated 4/7/05 from _____ to _____.
D-7 3589 Medicaid Coverage of Home Care for Certain Disabled Children.

Claimant's Exhibits:

C-1 Correspondence from [redacted] M.D., Assistant Professor of Pediatrics, University of [redacted] Children's Hospital.
C-2 Points and Authorities Regarding CDCSP Eligibility Determination by [redacted] Esq., accompanied by 42 USC 1396a(e)(3) and 42 CFR 435.225.

VII. FINDINGS OF FACT:

1) On February 1, 2005, the Bureau for Medical Services, hereinafter BMS, received a packet of information submitted on behalf of the Claimant to determine medical eligibility for participation in the Children with Disabilities Community Services Program, hereinafter CDCSP.

2) The determination was made that the information received on February 1, 2005 was not sufficient to render an eligibility determination as the Cost Estimate Worksheet (D-2) failed to include the cost of several items listed, and it failed to provide all of the services the Claimant was receiving. Among the services omitted was 16-hours per day, 7-days a week of skilled nursing services as verified on page 2 of 11 in exhibit D-4 (also received on 2/1/05).

3) In response to the incomplete documentation received on February 1, 2005, the Bureau for Medical Services, Office of Behavioral and Alternative Health Care, sent a Memorandum (D-3) to _____ on February 23, 2005 requesting additional information.

4) On March 4, 2005, BMS received the requested information (D-5), and On April 7, 2005, Stephen W. Mullins, Director, Office of Behavioral and Alternative Health Care, sent a Memorandum to Robert Clark, Community Service Manager of [redacted] County, with a copy to _____. This Memorandum states in pertinent part:

> According to the criteria for Children with Disabilities Community Services Program under the federal code, "the estimated cost of caring for the child outside the institution will not exceed the estimated costs of treating the child within the institution". As per the costs that you submitted, Abigail's monthly average costs are more than the same services delivered in an institution and are not cost effective.

5) Evidence received at the hearing reveals that financial eligibility for participation in the CDCSP Program is determined by the local county Department of Health and Human Resources Office where the child resides, but that BMS is responsible for determining medical eligibility. Medical eligibility is comprised of two components; (1) Clinical medical eligibility to confirm the appropriate level of care (nursing home, ICF/MR facility, acute care hospital or psychiatric facility), and (2) Cost feasibility (the estimated cost of caring for the child outside the institution will not exceed the estimated costs of treating the child within the institution).

6) The Department acknowledged that the medical documentation submitted clinically qualifies the Claimant for a level of care consistent with the cost of services in an acute care hospital, however, the Department maintains that the Claimant's in-home medical expenses exceed the maximum monthly cost for the Claimant's level of care (hospital care) of $13,820 - the estimated costs of treating the child within the institution (D-1).

7) The Department cited information identified as exhibit D-5 which includes a document entitled – Itemized Medical Expenses for 11/2004 through 2/2005. Page 4 of this document itemizes home nursing costs from January 7, 2005 until present - 16 hours a day, 7 days per week at $45 an hour for an average cost $21,900 per month. It was noted that this does not include the itemized monthly medical costs on page 1 ($5373.60), page 2 ($1892.86), and Birth-to-3 expenses of $525 per month submitted on February 1, 2005.

8) The "cost feasibility," according to testimony offered by the Department, is determined by using the "billed amount" of medications, doctors care, equipment, specialized tests, hospitalizations, surgeries, home-health care etc. . . - Anything that is medically necessary for the care of the child.

The "billed amount" is used because it prevents deductions in medical expenses that would create an unfair advantage to individuals who have resources, insurance or private pay, to bring monthly medical expenses under the cost feasibility amount. Further, it is unreasonable for the Department to convert billed expenses to the amount Medicaid pays on every case. The "billed amount" is fair and consistently applied to all applicants/recipients.

9) Testimony received at the hearing indicates that the Department uses the same procedure "billed amount" to determine cost feasibility for continued eligibility of active CDCSP recipients. This occurs on cases during recertification and randomly when the individual is consistently close to the maximum allowable limit for their relevant level of care. In addition to these measures, policy found in exhibit D-1 requires case managers to report when a child has exceeded the relevant average facility cost.

10) Counsel for the Claimant acknowledged that the estimated costs submitted by his client exceeded the $13,820 amount allowed for acute hospital level of care, but he contends that the amount Medicaid pays for medical expenses, not unlike private insurers, is significantly less than the "billed amount" the Department is using to arrive at the estimated Medicaid costs. In addition, he contends that the CDCSP average monthly Medicaid costs for a hospital stay has not been updated since 1994. Exhibit C-1 was submitted to show that the cost of the Claimant's care in the Children's Hospital of Pittsburgh pediatric ICU would exceed $3,000 per day.

11) The Claimant's request to submit what was reported to be corrected calculations in order to show medical expenses were below the cost feasibility limit at the time of the original application was denied. West Virginia Income Maintenance Manual, Chapter 1.2(E) states that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. The reported corrected calculations were submitted subsequent to the Department's April 7, 2005 denial.

It is unclear exactly when the corrected calculations were made available to the Department following the April 7, 2005 Notice of denial, but policy found in the West Virginia Income Maintenance Manual, Chapter 1.2(A)(1) states - No person is denied the right to apply for any Program administered by the Division of Family Assistance. Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest. There are no provisions in policy to indicate that an individual cannot apply to the CDCSP Program, or any other program, while in hearing status.

12) The WVDHHR Eligibility Guide for Children with Disabilities Community Services Program (September 1, 1994) states that as a condition of eligibility, the level of services provided in the community must serve the child as well as or better than comparable services in a medical institution and must cost less than the same services delivered in a comparable medical institution. The relevant level of care for consideration of cost feasibility in this case was acute care hospital - limited to $13,820 per month.

13) West Virginia Income Maintenance Manual, Chapter 1.19(A) states that the following forms must also be completed as part of the eligibility determination process for the CDCSP Program. This information is sent directly to BMS by the Case Management Agency.

- Form DD-2A: This is the medical form the child's physician uses to submit necessary information to allow a determination of medical eligibility.

- DD-6: Cost estimate worksheet for medical services that must be completed and used by the Case Management Agency:

  • Assure the program plan is cost feasible, i.e., community services cost less than placement in a medical institution; and

  • Follow through with the school system, health care providers and other agencies to assure that the community services are implemented and consistently remain cost-effective.

  • Program Plan: The program plan must be developed by an interdisciplinary team (IDT) consisting of the child, family or legal representative, service providers, advocates, professionals, paraprofessionals and other stakeholders needed to ensure the delivery of the necessary level of services. This contains the same elements of the State DD-5 form.

  • Evaluations: Additional evaluations, as appropriate, to determine medical eligibility and services for the specific disability group such as psychological or psychiatric reports, social assessments, discharge plan, etc.

14) The Federal Code of Regulations, found at 42 CFR § 435.225, states that individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

> (a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.
> (b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:
> 1) The child requires the level of care provided in a hospital, SNF, or ICF.
> 2) It is appropriate to provide that level of care outside such an institution.
> 3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.
> (c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

15) Regulations found at 42 USC § 1396a(e)(3) state:

> (3) At the option of the State, any individual who-
>
> (A) is 18 years of age, or younger and qualifies as a disabled individual under section 1382c(a) of this title;
>
> (B) with respect to whom there has been a determination by the State that-
>
> (i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,
>
> (ii) it is appropriate to provide such care for the individual outside such institution, and
>
> (iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and
>
> (C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter, shall be deemed, for the purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter IVI of this chapter.

VIII. CONCLUSIONS OF LAW:

1) The Claimant's application for participation in the CDCSP Program was received by the Bureau of Medical Services on or about February 1, 2005.

2) Medical eligibility for the CDCSP Program requires an individual to meet clinical eligibility to confirm the appropriate level of care and a cost feasibility standard. The clinical information reviewed confirms that the Claimant is medically eligible for an acute care hospital "level of care," however, the information submitted to establish cost feasibility, the original information and the additional information submitted for verification, exceeds the established standard of $13,820 per month – the estimated costs of treating a child within an institution.

3) The reported "corrected cost estimate" introduced by the Claimant was not permitted to be entered into evidence and cannot be considered for eligibility with the original application. The reported "corrected" figures were not submitted prior to the Department's April 7, 2005 denial notice and policy states that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

4) The language used in the U.S.C and the C.F.R. is "estimated" (not actual) when comparing the cost of in-home care with institutional care. The Department's procedure of using the "billed amount" of medical expenses to arrive at an "estimated" cost to determine cost feasibility for the relevant level of care is in compliance with the regulations. This method is fair and consistent for applicants and recipients of the CDCSP Program when determining cost feasibility.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for participation in the CDCSP Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of December, 2005.

_____

Thomas E. Arnett
State Hearing Officer