



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

October 25, 2005

Mrs. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case Name: \_\_\_\_\_

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 6, 2005. Your hearing request was based on the Department of Health and Human Resources' proposed Denial of Medical Re-certification under Children with Disabilities Community Services Program.

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 is based on current policy and regulations. Some of these regulations state as follows: A child must have five [5] deficits to qualify medically. The capabilities of the child will be compared to other children his/her own age.

The information submitted at your hearing revealed: The PAS-2000 assessed on December 14, 2004 and the Individualized Education Plan (I E P) dated May 12, 2004 are in direct conflict with one another. The inconsistency in the reports do not clearly establish \_\_\_\_\_'s eligibility for continued services under the Children with Disabilities Community Services Program.

It is the decision of the State Hearings Officer to UPHOLD the DENIAL of Medical Re-certification under the Children with Disabilities Community Services Program.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Susan Striar-May, B. M. S.

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_\_,  
**Claimant,**

**v.** **Action Number:** \_\_\_\_\_

**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 October 25, 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 convened on October 6, 2005 on a timely appeal filed July 28, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties prior to the hearing and, \_\_\_\_\_ did not have legal representation.

**II. PROGRAM PURPOSE:**

The Program entitled Children with Disabilities Community Services Program 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 Services 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:**

\_\_\_\_\_, Mother  
\_\_\_\_\_, Father

Susan Striar-May, Consultant – Bureau for Medical Services\*

Dr. Sandra Joseph, M.D – Medical Director – Bureau for Medical Services\*

\* Participated by conference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is: Does \_\_\_\_\_ meet the medical eligibility criteria for the Children with Disabilities Community Services Program?

#### **V. APPLICABLE POLICY:**

Medicaid Program Instruction MA-03-65, December 1, 2003 – Eligibility Guide for Children With Disabilities Community Services Program.

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

##### **Department's Exhibits:**

- D-1 Denial Memorandum dated 06/29/05
- D-2 Individualized Education Plan – \_\_\_\_\_ County Schools dated 05/12/04
- D-3 Medicaid Program Instruction MA-03-65, December 1, 2003 – Eligibility Guide for Children With Disabilities Community Services Program
- D-4 PAS-2000 dated 12/14/04
- D-5 Letter dated 11/22/04 from \_\_\_\_\_ Dept. of Orthopaedic Surgery
- D-6 Letter dated 06/11/04 from \_\_\_\_\_ Dept. of Orthopaedic Surgery
- D-7 Letter dated 12/30/04 from \_\_\_\_\_ Dept. of Neurological Surgery
- D-8 Letter dated 12/10/04 from \_\_\_\_\_ PT
- D-9 Physical Therapy Re-evaluation dated 02/24/05 by \_\_\_\_\_ PT
- D-10 Letter dated 05/09/05 from Mrs. \_\_\_\_\_ to Mr. \_\_\_\_\_, re: Denial
- D-11 Evaluation Report dated 03/18/05 from \_\_\_\_\_ Dept. of Pediatrics  
Orthopaedic Surgery
- D-12 Letter dated 05/10/05 from \_\_\_\_\_ Dept. of Neurological Surgery
- D-13 Letter dated 06/20/05 from Mrs. \_\_\_\_\_ to Mr. \_\_\_\_\_ re: O T Evaluation
- D-14 Memorandum dated 09/29/05 with Hearing Exhibits
- D-15 Scheduling Notice dated 08/16/05
- D-16 Request for Hearing dated 07/13/05
- D-17 Request dated 08/10/05 from Bureau for Medical Services to participate by conference call
- D-18 GroupWise Messages re: Scheduling

##### **Claimants' Exhibits:**

None

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

1) This issue involves the denial of services under the Children with Disabilities Community Services Program for \_\_\_\_\_. \_\_\_\_\_, an eight year old Caucasian female, has received services under the CDCSP program for eight (8) years. Her Primary Diagnosis is listed as Cerebral Palsy with a Secondary Diagnosis of Spastic Diplegia. The noted abnormalities and treatment was Head – Large Fontanelle with V P Shunt in place. The Department is seeking to close \_\_\_\_\_'s case based primarily upon inconsistencies between the PAS-2000 dated December 14, 2004 and, the May 12, 2004 Individualized Education Plan (IEP) completed by the \_\_\_\_\_ County Schools. It should be noted here that neither Mrs. Striar-May nor Dr. Joseph have ever met \_\_\_\_\_.

2) Medicaid Program Instruction MA-03-65, December 1, 2003 – Eligibility Guide for Children with Disabilities Community Services Program states in part,

Medicaid [Title XIX of the Social Security Act] is a federal/state 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.

A. To clarify the West Virginia Medicaid Program's requirements for determination of medical eligibility for CDCSP for Nursing Facility level of care, the following are to be included in the initial application/reapplication packet for children who have suspected need for this level of care:

1. PAS-2000 [Revised 01/03] completed within 90 days of submission;
2. Cost Estimate Worksheet DD6-CDCSP;
3. Social Assessment and History;
4. Individual Program Plan [IPP] and Individualized Education Program [IEP] or Individualized Family Service Plan [IFSP];
5. Specialty evaluations if indicated [Physical, Occupational, Speech and Language, Nutrition, etc.] and;
6. Home Health Care Plan if receiving home health services.

B. A child must have five [5] deficits to qualify medically. The capabilities of the child will be compared to other children his/her own age. The deficits will be derived from a combination of the following assessment elements of the PAS-2000:

### **Question #26**

1. Eating                      Level 2 or higher [physical assistance to get nourishment, not preparation];

2. Bathing Level 2 or higher [physical assistance or more];
3. Grooming Level 2 or higher [physical assistance or more];
4. Dressing Level 2 or higher [physical assistance or more];
5. Continence Level 3 or higher [must be incontinent];
6. Orientation Level 3 or higher [totally disorientated, comatose];
7. Transfer Level 3 or higher [one person or two persons assist in the home];
8. Walking Level 3 or higher [one person assist in the home];
9. Wheeling Level 3 or higher [must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home].

#### **Question #25**

In the event of an emergency, the individual is [c] mentally and/or [d] physically unable to vacate a building.

#### **Question #27**

The child has skilled nursing needs in one or more of these areas, [g] suctioning, [h] tracheotomy, [i] ventilator, [k] parenteral fluids, [l] sterile dressings, or [m] irrigations. [The use of oxygen is not a deficit.]

#### **Question #28**

The child is [c] not capable of administering his/her own medications.

- C. The evaluations must demonstrate that a child has a diagnosis of a severe, chronic disability which is attributable to a physical impairment or medical condition requiring a Nursing Facility Level of Care. The child's need for this level of care and its corresponding services must be for an extended duration.
- D. It is also necessary that the level of services provided in the community must serve the child as well as or better than comparable services in a nursing facility and the total costs must be less than the same services delivered at that level of care.

3) Mrs. Striar-May explained the policy as it relates to the Children with Disabilities Community Services Program. She then referred to the Memorandum dated June 29, 2005, (Exhibit D-1), sent to the [REDACTED] County DHHR Office from the Office of Behavioral Health and Alternative Health Care. It stated in part,

“After review of the available records, \_\_\_\_\_ does not meet criteria for continuation of services through the CDCSP program. From prior determinations and from the prior DD-2A CDCSP forms, the ICF/MR, acute psychiatric facility and acute care facility levels of care. Documentation from the child’s medical providers, in addition to physical and occupational therapy evaluations, describe a child with limitations, mostly related to mobility, which do not significantly impair her ability to function at school or at home. While limited assistance may be necessary at times, she would not require services such as those provided in a nursing facility if those services were not available in the community. These records paint a much different picture than presented in the PAS-2000.”

The most recent Individualized Education Plan (I E P), dated May 12, 2004, (Exhibit D-2), from the \_\_\_\_\_ County School was Mrs. Striar-May’s next point of reference. According to Mrs. Striar-May, the I E P only addresses \_\_\_\_\_’s level of Mobility. Under Section III PRESENT LEVELS OF EDUCATIONAL PERFORMANCE, it states in part,

“\_\_\_\_\_ is able to walk throughout the school and on the playground in her walker independently with occasional scissoring. She is able to make all transfers to and from her walker independently. She is able to attain stand from a bench independently with crutches, but requires assistance for all other transitions on crutches. \_\_\_\_\_ is able to perform as least 20 sit-ups independently with her legs held. She is able to attain and maintain half kneel with minimum to moderate assistance. She continues to stand in her standing table or at a support for 20 – 30 minutes a day. She continues to use her wheelchair in the lunchroom, for fire drills and as necessary based on time constraints.”

On Attachment 2 of the May 12, 2004 I E P it states in part, “The student will participate in the WV Measures of Academic Progress through Standard Conditions.” Mrs. Striar-May also referred to Section VIII PLACEMENT stating in part, “Percentage of time in: Regular Education Environment – 98% and; Special Education Environment – 2%.”

Mrs. Striar-May referred to Exhibit D-3 Medicaid Program Instruction MA-03-65, December 1, 2003 – Eligibility Guide for Children With Disabilities Community Services Program. One of the main criteria is that ‘a child must have a **severe** chronic disability which is attributable to a physical impairment or medical condition requiring a Nursing Facility Level of Care.’

4) Dr. Joseph reviewed the record as it pertains to \_\_\_\_\_’s eligibility for the CDCSP program. \_\_\_\_\_ does not meet the criteria under the ICF/MR level of care for the mentally retarded. She does not demonstrate any psychiatric abnormalities for acute psychiatric level of care. The information from her medical providers demonstrates that \_\_\_\_\_ is very stable. One of the letters indicates \_\_\_\_\_ just needs follow-up. According to Dr. Joseph, this indicates \_\_\_\_\_ is very stable from a medical point of view. This leaves the area of nursing facility level of care in which these services have been requested. The question is whether \_\_\_\_\_ would require or need the services of a nursing facility if she were not to receive these services in the community. The need for assistance is not sufficient enough to require services provided in a nursing facility.

5) \_\_\_\_\_ received a total of six (6) deficits on the PAS-2000 dated December 14, 2004. The PAS-2000, (Exhibit D-4), was completed by \_\_\_\_\_ D. O. of Pediatric Care \_\_\_\_\_ Dr. \_\_\_\_\_ recommended that \_\_\_\_\_ should receive Personal care to meet her needs. The PAS also provided the following information:

### **Question #25**

In the event of an emergency, the individual is [c] mentally and/or [d] physically unable to vacate a building. (d) \_\_\_\_\_ is physically unable to vacate a building. **Total Deficit = 1.**

### **Question #26**

- |    |                    |                            |                           |
|----|--------------------|----------------------------|---------------------------|
| a. | Eating             | Level 1 - <b>0 deficit</b> |                           |
| b. | Bathing            | Level 2 - <b>1 deficit</b> |                           |
| c. | Grooming           | Level 2 - <b>1 deficit</b> |                           |
| d. | Dressing           | Level 2 - <b>1 deficit</b> |                           |
| e. | Continence/Bladder | Level 2 - <b>0 deficit</b> |                           |
| f. | Continence/Bowel   | Level 1 - <b>0 deficit</b> |                           |
| g. | Orientation        | Level 1 - <b>0 deficit</b> |                           |
| h. | Transfer           | Level 2 - <b>0 deficit</b> |                           |
| i. | Walking            | Level 4 - <b>1 deficit</b> |                           |
| j. | Wheeling           | Level 3 - <b>1 deficit</b> | <b>Total Deficits = 5</b> |

### **Question #27**

The child has skilled nursing needs in one or more of these areas, [g] suctioning, [h] tracheotomy, [i] ventilator, [k] parenteral fluids, [l] sterile dressings, or [m] irrigations. [The use of oxygen is not a deficit.] None. **Total Deficits = 0.**

### **Question #28**

The child is [c] not capable of administering his/her own medications. **N/A – Child.**

6) Mrs. Striar-May and Dr. Joseph disagreed with the PAS-2000 in the following manner:

Vacating the building - The I E P dated May 12, 2004 states \_\_\_\_\_ can use her wheelchair to exit with fire drills. This is considered “With Supervision” which does not qualify because it must be “Physically Unable” to meet that criteria of the PAS.

Wheeling – The Physical Therapy notes dated December 10, 2004, (Exhibit D-8), states in part,

“\_\_\_\_\_ is currently ambulating with a posterior walker with her front wheels swiveled. She is able to negotiate most of her school environment independently with adult supervision and assistance needed in certain areas of the school.” When using the wheelchair she is able to

propel herself independently in the hallway and the gym. There is a little discrepancy with how much assistance is needed with Wheeling.

Walking – The PAS lists \_\_\_\_\_ as needing two person assistance. The I E P notes of May 12, 2004 state in part, “\_\_\_\_\_ is able to walk throughout the school and on the playground in her walker independently. She is able to make all transfers to and from her walker independently.” The Physical Therapy Re-evaluation dated February 24, 2005, (Exhibit D-9), states in part, “\_\_\_\_\_ is able to walk throughout most of the school utilizing her posterior walker with her front wheels swiveled independently with adult supervision. She is able to go on and off curbs with adult supervision/assistance depending on the height of the curb. Dr. Joseph’s believes \_\_\_\_\_ should be a Level 2 (Supervised/Assistive Device) rather than a Level 4 (Two Person Assistance).

Bathing, Dressing and Grooming – These areas stem mainly from \_\_\_\_\_’s balance problem. This is addressed in the Occupational Therapy evaluation dated June 17, 2005 (Exhibit D-13).

While \_\_\_\_\_ receives Physical Therapy, she has not received Occupational Therapy for a period of time.

\_\_\_\_\_ is considered to function in a normal environment despite her limitations in balance and mobility. These limitations do not qualify for a Nursing Facility level of care as it is presented in the documentation.

7) The Department did not provide exhibits of ‘prior determinations and prior DD-2A CDCSP forms’ as referred to in their Denial Memorandum dated June 29, 2005 (Exhibit D- 1). Dr. Joseph does not believe a severe chronic condition exists based upon notes from the Neurosurgeon who requested \_\_\_\_\_ to return in one year and; Orthopaedic Surgical therapy assessment every six months.

8) Mr. and Mrs. \_\_\_\_\_ stated that \_\_\_\_\_ soils her undergarments several times a week. She has not received Occupational Therapy services since five years of age. If \_\_\_\_\_ did not receive these services she could not maintain her current quality of living. The Neurosurgeon will evaluate \_\_\_\_\_ in a year because she has already undergone 6 separate cranial repair surgeries. It is not a maintenance visit with the surgeons; instead it is a period to allow \_\_\_\_\_ to recuperate before additional surgeries are required. \_\_\_\_\_ also needs orthopaedic surgery, but the surgeon is unwilling to perform them at this time. \_\_\_\_\_ is eight years old with hydrocephalus and has already undergone a total of seventeen (17) different surgeries. The concerns are not with \_\_\_\_\_’s mental state but with her physical abilities.

The \_\_\_\_\_’s describe \_\_\_\_\_ as having a four inch by two inch hole (fontanelle) in the top of her head, covered by fluid and skin. The bone on the top of \_\_\_\_\_’s head has sharp jagged edges that if broken could fall into the brain fluid. If she falls, she could kill herself. Mr. \_\_\_\_\_ stated that his fist could probably fit into the top of \_\_\_\_\_’s skull. She must have assistance with everything except communication. The PAS does not accurately reflect \_\_\_\_\_’s medical condition. It does not take into account any of the surgeon’s comments and diagnoses because the PAS asks very specific questions. \_\_\_\_\_’s idea of a Transfer is to dive unto the floor as a rambunctious eight year old child. She is unable to move her legs to get on the floor. This is extremely dangerous. A helmet was considered for \_\_\_\_\_ because she has scars on her forehead because her skin breaks down fairly easily. A VP Shunt has come

through her skin because of her sensitivity. Mr. and Mrs. \_\_\_\_\_ believe \_\_\_\_\_ would be placed in a Nursing Facility because they do not have anyone else to provide care. According to Mr. \_\_\_\_\_, it is becoming extremely difficult to assist \_\_\_\_\_ because she is getting older and heavier.

9) Dr. Joseph stated that the Pediatrician checked Personal Care for \_\_\_\_\_ when, the fontanelle would fall under the acute care guidelines. \_\_\_\_\_ would need a Level 3 rating, (One Person Assist), in Transferring before receiving a deficit.

10) Dorland's Illustrated Medical Dictionary defines Fontanelle as: A soft spot, such as one of the membrane-covered spaces remaining in the incompletely ossified skull of a fetus or infant.

### **VIII. CONCLUSIONS OF LAW:**

1) A child must have five [5] deficits to qualify medically. The capabilities of the child will be compared to other children his/her own age.

\_\_\_\_\_ received a total of six (6) deficits on the PAS-2000 dated December 14, 2004.

2) The evaluations must demonstrate that a child has a diagnosis of a severe, chronic disability which is attributable to a physical impairment or medical condition requiring a Nursing Facility Level of Care. The child's need for this level of care and its corresponding services must be for an extended duration.

\_\_\_\_\_ 's Primary Diagnosis is listed as Cerebral Palsy with a Secondary Diagnosis of Spastic Diplegia. The noted abnormalities and treatment were Head – Large Fontanelle with V P Shunt in place. \_\_\_\_\_ D. O. recommended that \_\_\_\_\_ needed Personal Care Services rather than Nursing Home Care. The reports from the \_\_\_\_\_ do not substantiate a diagnosis of a severe chronic disability. \_\_\_\_\_ M. D., Chairman of Neurological Surgery at the \_\_\_\_\_ refers to \_\_\_\_\_ in his December 30, 2004 report as "a normal little girl with marked gross motor delays.

3) It is also necessary that the level of services provided in the community must serve the child as well as or better than comparable services in a nursing facility.

\_\_\_\_\_ receives physical therapy through her school environment. The May 12, 2004 Individualized Education Plan (I E P) indicates that \_\_\_\_\_ is in Regular Education 98% of the time and Special Education 2% of the time.

4) The PAS-2000 assessed on December 14, 2004 and the Individualized Education Plan (I E P) dated May 12, 2004 are in direct conflict with one another. The inconsistency in the reports do not clearly establish \_\_\_\_\_ 's eligibility for continued services under the Children with Disabilities Community Services Program.

**IX. DECISION:**

It is the decision of this State Hearing Officer to UPHOLD the DENIAL of continued services under the Children with Disabilities Community Services Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 25th Day of October, 2005.**

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**Ray B. Woods, Jr., M.L.S.  
State Hearing Officer**