



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin
Governor

Martha Yeager Walker
Secretary

December 26, 2006

RE: _____

Dear Mr. and Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your son=s hearing held December 21, 2006. Your Hearing request was based on the Department of Health and Human Resources' decision to deny your application for benefits for _____ under the Children with Disabilities Community Services Program (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.

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. Eligibility and benefit levels for the CDCSP Program are determined based on current regulations. One of these regulations specifies that in order to be eligible, services must be cost-effective when compared to the cost of facility-based care.

The evidence and testimony submitted during the hearing revealed that the allowable cost of care for nursing facility level of care is \$56,820 per year. The billed cost of care for [REDACTED] that was provided totaled \$59,241. The issue of [REDACTED]'s medical eligibility for the program was not determined by the agency due to the need for additional medical information.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their denial of services under the CDCSP Program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Susan Striar May, BMS
Chairman, BOR
[REDACTED] County Schools

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

Claimant,

v.

Action Number: 06-BOR-2922

**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 December 21, 2006 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 December 21, 2006 on a timely appeal filed September 12, 2006.

It should be noted here that the claimant=s benefits under the CDCSP Program have been denied.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Children with Disabilities Community Service Program (CDCSP) is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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
_____ - claimant's father
_____ - Coordinator of Parent Education [REDACTED] County Schools

Susan Striar May - Hearing Representative for Bureau of Medical Services by telephone
Sandra Joseph, MD – Medical Director for Bureau of Medical Services by telephone

Presiding at the hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether it has been established that the claimant meets the eligibility criteria for the CDCSP Program

V. APPLICABLE POLICY

Bureau of Medical Services Program Eligibility Criteria

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Departments= Exhibits:

DHS-1	Notification letter dated June 21, 2006
DHS-2	CDCSP Information Sheet pages 4 and 5
DHS-3	WV DHHR Children with Disabilities Community Services Program Cost Estimate Worksheet with attached list of pending medical expenses
DHS-4	Memorandum dated 02/15/06 from Patricia Winston, Acting Director of the Office of Behavioral and Alternative Health Care to Mr. and Mrs. _____ entitled Pending of Medical Eligibility Under Children with Disabilities Community Services Program
DHS-5	CDCSP Cost Estimate Worksheet for time period January 2005 through May 2006
DHS-6	West Virginia Department of Health and Human Resources Pre-Admission Screening form signed by [REDACTED] MD on 1-18-06
DHS-7	ADA Individual Accommodation Plan dated 09-02-05 signed by [REDACTED] MOTR/L
DHS-8	Medical report dated 04/20/06 from [REDACTED] MPT
DHS-9	Medical report dated 04/19/06 from [REDACTED] MOTR/L
DHS-10	Medical report from [REDACTED] MD dated 12/19/05
DHS-11	Medical report from [REDACTED] MD dated 12/19/05
DHS-12	Medical report from [REDACTED] RN dated 12/19/05
DHS-13	Medical report from [REDACTED] physical therapist dated 12/19/05

DHS-14 Medical report from [REDACTED] occupational therapist dated 12/19/05
DHS-15 Medical report from [REDACTED] MD dated 12/19/05 consisting of three pages
DHS-16 Medical report from [REDACTED] MD dated 12/19/05 consisting of two pages
DHS-17 WV DHHR Social History dated 01/15/06
DHS-18 Medicaid Program Instruction memo dated 12/01/2003
DHS-19 CDCSP Application Packet Requirements

VII. FINDINGS OF FACT:

1. Claimant is an 8 year old female who resides with her family. She is diagnosed with spina bifida, neurogenic bladder, myelodysplasia, fecal incontinence and cutaneous vesicostomy. An application for benefits through the CDCSP was filed on behalf of the Claimant by her parents. This application was received by the Bureau of Medical Services on 01/23/06.
2. The Department denied the application for CDCSP services for the claimant on June 21, 2006 (**DHS1**) based on their findings that the billed charges for the last year exceed the allowable ceiling for nursing home level of care. In addition the family was informed that a decision on the Claimant's medical level care could not be made as the request for an Independent Occupational and Physical Therapy evaluation was not conducted to clarify inconsistencies within the various medical reports.
3. W V Dept. of Health & Human Resources Policy Manual, Eligibility Guide (**DHS2**) - Children With Disabilities Community Services Program states:

Target Population: A child with a high need for medical services and/or nursing services who is at risk of hospitalization or placement in a nursing facility (NF)

Medical eligibility will be determined by the Office of Medical Services (OMS). Medical eligibility is based on the submission of a packet of information including a physical examination, psychological examination, psychological evaluation, social history, psychiatric evaluation (if applicable), other evaluations (as applicable), program plan and cost estimate worksheet.

Financial Limitations: Services must be cost-effective when compared to the cost of facility-based care.

Cost of services in a hospital or psychiatric facility - \$13,820 per month
Cost of services in a NF - \$2,070 per month
Cost of services in an ICF/MR - \$5,400 per month

4. WV Dept. of Health and Human Resources memorandum entitled Eligibility Guide for children with Disabilities Community Service Program dated December 1, 2003 (**DHS 18**) states:

Purpose: This program instruction revises West Virginia Medicaid Program Eligibility Guide requirements for children 18 years of age and under who have the need for Nursing Facility level of care and want to apply for Children with Disabilities Community Services Program effective December 1, 2003

Policy Provisions:

- A. To clarify the West Virginia Medicaid Program's requirement 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 completed within 90 days of submission
 2. Cost Estimate Worksheet
 3. Social Assessment and History
 4. Individual Program Plan and Individualized Education Program or Individualized Family Service Plan
 5. Specialty evaluations if indicated (Physical, Occupations, 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 high (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 high (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 the 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 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.
- 5. Testimony received from the department's representative indicates that the nursing level of care costs that are indicated within the written policy have been updated. The agency currently uses \$4735 per month/\$56,820 per year as the measure for cost effectiveness for program eligibility.
 - 6. Testimony and evidence provided during this hearing indicates that the initial Cost Estimate Worksheet provided by the Claimant's parents (**DHS 3**) was not adequate. A notice was sent to the Claimant's parents on 02/15/06 (**DHS4**) requesting an updated Cost Estimate Worksheet to include all billed charges from the last twelve months. In addition, a request was made at this same time for Independent Physical Therapy and Occupational Therapy evaluations to relieve inconsistencies within the various medical reports provided at the time of application.

7. Evidence shows that the Claimant's parents provided an updated Cost Estimate Worksheet as requested (**DHS5**). The cost estimate worksheet provided by the parents includes 5 pages of incurred and anticipated expenses for the Claimant. Testimony received from the Claimant's mother indicates that all of the anticipated expenses listed on the worksheet were not incurred. Those items that were listed but not incurred were:

Weight management clinic visit	\$717
Therapeutic Horseback riding	\$780 (Did attend 3 sessions @ \$30)
Walker	\$350

After removing the above items as expenses, the expenses listed on the cost estimate worksheet total \$59,241. The total allowable expenses for the nursing facility level of care are \$56,820.

8. Evidence and testimony indicate that the issue of the Claimant's medical eligibility could not be determined by the agency due to inconsistencies that existed within the various medical reports provided with the application. When the Claimant's parents were contacted to provide the Independent Physical Therapy and Occupational Therapy reports, evidence shows that one page reports were submitted from the Claimant's physical therapist and occupational therapist (**DHS 8 & 9**) indicating the Claimant's present level of function. Testimony offered by the department's representative and the Medical Director for the Bureau of Medical Services indicate that questions still remained once these additional reports were received. The decision on medical eligibility was further complicated by the Claimant's medical status following corrective surgeries to her legs. Evidence is clear that the Claimant's parents believed that the information they were providing to the agency was the information that the agency had requested. It is also clear that the agency had legitimate reason to question the inconsistencies that existed within the various medical reports. The department's determination that a decision on medical eligibility could not be made is moot in light of the Claimant's ineligibility based on cost effectiveness.

VIII. CONCLUSIONS OF LAW

1. Policy stipulates that services received in the community must be comparable or better than services received in a nursing facility and the total costs must be less than the costs of care within the facility.
2. Policy stipulates that the cost of service for the nursing facility level of care is \$4,735 per month or \$56,820 per year.

IX. DECISION:

The agency has established a cost effectiveness standard for the nursing facility level of care category for CDCSP services. Claimant's expenses as provided by her parents exceed that amount.

It is the decision of the state hearing officer to **UPHOLD** the agency's decision to deny the Claimant's application for CDCSP services.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.
Form IG-BR-29.

ENTERED this 26th Day of December 2006

State Hearing Officer