



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 1, 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 November 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, a child must have mental retardation and/or related conditions (e.g., cerebral palsy, autism, traumatic brain injury) and be at risk of being placed in an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions (ICF/MR). In addition, the medical services must be more cost effective for the State than placement in a medical institution.

The information, which was submitted at the hearing, revealed that your son does not have an eligible diagnosis to qualify for the program.

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

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

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

**v.**

**Action Number: 06-BOR-2948**

**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 November 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 November 21, 2006 on a timely appeal filed September 25, 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 father

\_\_\_\_\_, claimant's mother

Susan Striar May, Bureau of Medical Services

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 medical and financial 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 August 17, 2006
DHS-2	CDCSP Information Sheet pages 4, 5, 8 and 9
DHS-3	Redacted Hearing Decision issued by Thomas E. Arnett, State Hearing Officer
DHS-4	CDCSP Cost Estimate Worksheet for time period March through June 2006
DHS-5	Explanation of benefits forms from Accordia for _____ consisting of 81 pages
DHS-6	Annual Medical Evaluation for CDCSP completed June 30, 2006 for _____
DHS-7	Medical Encyclopedia definition for Pierre Robin syndrome from Medline Plus
DHS-8	DD-3 Psychological Evaluation for _____ dated July 25, 2006

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

1. \_\_\_\_\_ is an 8 month old male who, resides with his family. He is diagnosed with Agenesis of corpus collosum, seizures, cleft palate, Pierre Robin Syndrome, tracheostomy, congenital hip dysplasia, bilateral hydronephrosis and GER. An application for benefits through the CDCSP was filed on behalf of \_\_\_\_\_ by his parents.  
(3)
2. The Department denied the application for CDCSP services for the claimant on August 17, 2006 based on their findings that claimant did not have an eligible diagnosis for the ICF/MR level of care and that the costs of caring for claimant outside an institution was estimated to exceed the costs of treating claimant within an institution. **(DHS1)**

3. A medical evaluation for Children with Disabilities Community Services Program DD-2A (**DHS6**) was completed on the claimant on June 30, 2006 by Jean Soneshives MD (sic) The medical evaluation of the claimant took place between the dates of May 26, 2006 through June 6, 2006. Page 4 of the evaluation indicates the following under Diagnoses:

Mental: Agenesis of Corpus Collosum, Seizures

Physical: Cleft Palate, Congenital Hip dysplasia, bilateral hydronephrosis, tracheostomy (respiratory distress Pierre Robin Syndrome), GER- G tube

The examining physician recommended an Intermediate Care Facility (MR/DD)

4. A Psychological Evaluation DD-3 (**DHS8**) was completed on the claimant by [REDACTED] MA on July 25, 2006. The current evaluation (**DHS8 page 2**) reports the following:

- A. Intellectual testing was not performed due to claimant's age.
- B. The Vineland Adaptive Behavior Scale was used to measure claimant's Adaptive Behavior. The results of this testing indicated that claimant was significantly behind others in his age group in every area of functioning.

5. The Psychological Diagnosis and Prognosis page 5 (**DHS8**) shows the following:

Axis I: No diagnosis

Axis II: Deferred R/O Mental Retardation

Axis III: hydronephrosis, heart murmur, cleft palate, agenesis of the corpus collosum

Axis IV: Current GAF:20

If provided with intensive instruction and continued services, claimant may improve in delayed areas of his development such as motor, communicative, social behavior and daily living skills. Otherwise, little progression is likely to be ascertained.

6. Testimony from the department's representative and the Cost Estimate worksheet (**DHS4**) indicated that the average CDCSP monthly costs were determined to be \$27,270.23 per month for claimant's care. This cost was determined by totaling 81 pages of medical charges billed to claimant's insurance carrier, Accordia (**DHS4**) for the time period March 2006 through June 2006.
7. Testimony received from the department's representative indicates that claimant's medical and psychological evaluations recommend an ICF/MR level of care for the claimant but claimant does not have the required diagnoses of mental retardation and/or related conditions to qualify medically for the CDCSP services.
8. Testimony received from the department's representative indicates that in her experience working with CDCSP, a child as young as this claimant is rarely if ever diagnosed with

mental retardation. The psychological report **(DHS8)** supports this statement as it also indicates that an evaluation for mental retardation was deferred.

9. Testimony from claimant's father indicates that claimant's diagnosis of agenesis of corpus collosum may result in mental retardation and that his son suffers from severe developmental delays. The severe developmental delays are supported by both the psychological **(DHS8)** and medical evaluations **(DHS6)**.
10. West Virginia Dept. of Health & Human Resources Policy Manual, Eligibility Guide - Children With Disabilities Community Services Program:

Target Population: A child with mental retardation and/or related conditions (e.g., cerebral palsy, autism, traumatic brain injury) who is at risk of being placed in an Intermediate Care Facility for Individual with Mental Retardation and/or Related Conditions (ICF/MR)

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 (completed within the previous six months for an initial application and within ninety days for a redetermination) 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 or

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 (5)
  - g. Economic Self-Sufficiency

B. 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.

Financial Limitations: Services must be cost-effective when compared to the cost of facility-based care. Cost of services in an ICF/MR - \$5400 / month. NOTE: Testimony received during this hearing from department's representative indicates that this cost has been increased to \$6400 per month but manual has not been updated.

## **VIII. CONCLUSIONS OF LAW**

1. Policy stipulates that to be medically eligible, the applicant must require the level of care provided in a Nursing Facility (NR) or an Intermediate Care Facility for Individuals with Mental Retardation and/or Related Condition (ICF/MR) or an acute care hospital or an approved Medicaid in-patient psychiatric facility for children under the age of 21. The medical evaluation on claimant indicates that the evaluating physician determined that claimant required an Intermediate Care Facility. Neither the medical or psychological evaluations completed on the claimant provide a diagnosis of mental retardation or related condition that is required for the ICF/MR level of care.
2. Policy also stipulates that the cost of the applicant's care must be cost effective when compared to the cost of facility based care. The recommended ICF/MR level of care per month for CDCSP services is \$6400. While it was not clearly demonstrated that all bills utilized by the department in making the cost estimate for claimant's monthly care were

appropriate, the issue of cost effectiveness is moot due to the claimant's medical ineligibility for the program.

**IX. DECISION:**

Although the information presented at this hearing reveals that the claimant does suffer severe developmental delays, neither the medical or psychological examinations completed provide the required diagnosis of Mental Retardation and/or Related Condition for the recommended ICF/MR level of care for CDCSP services. It is the ruling of the hearing officer that the decision to deny claimant's application for these benefits was justified and such action is **upheld**.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

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

**ENTERED this 1st Day of December 2006**

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**Melissa Hastings  
State Hearing Officer**