



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

March 8, 2006

By \_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held February 23, 2006. Your Hearing request was based on the Department of Health and Human Resources' proposed action to discontinue benefits 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, the client must have substantial limits of functioning in three or more of the major life areas and require the level of care provided in a medical institution.

The information, which was submitted at the hearing, revealed that your son's limitations are not at the substantial level required for the program and he is not at risk for institutionalization.

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,

Sharon Yoho  
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: 05-BOR-6149**

**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 February 23, 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 February 23, 2006 on a timely appeal filed July 8, 2005.

It should be noted here that the claimant's benefits under the CDCSP Program have been continued pending the findings of this hearing.

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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 Sharon Yoho, 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 eligibility criteria for the CDCSP Program

### **V. APPLICABLE POLICY**

Bureau of Medical Services Program Eligibility Criteria

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

Departments= Exhibits:

- D-1 Notification letter dated June 30, 2005
- D-2 CDCSP Medical Eligibility Criteria, pages 8 and 9
- D-3 Psychological Update dated April 18, 2005
- D-4 Individualized Education Program, (IEP) report dated May 12, 2005
- D-5 Social History Report, dated April 19, 2005

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

1. \_\_\_\_\_ is a 10-year-old male who, resides with his family. He is diagnosed with Autism and is an active recipient of benefits under the CDCSP program. His eligibility for  
(3)  
this program was undergoing a review in May of 2005.

2. The Department determined that \_\_\_\_\_ no longer met the medical criteria for the program and issued a termination notice to his parents on June 30, 2005. This notice advised that he did not have substantial deficits in three major life areas and was not at risk of institutionalization.
3. \_\_\_\_\_ attends public school with 99% of instruction received in regular classroom and 1% in a special education setting.
4. \_\_\_\_\_ has an Axis I. diagnosis of Autistic Disorder and no Axis II diagnosis. This indicates that there is no mental retardation identified. A Comprehensive Psychological Evaluation update completed on April 18, 2005 by Psychologist, \_\_\_\_\_ reports \_\_\_\_\_ to continue to have limited social skills however; his ability to interact and stay focused has improved a good bit in the past couple of years. The Evaluation reports him to have good expressive language, fair receptive language and the ability to read and write. It reports him to be able to do some aspects of personal care with prompting. It reports him to need some physical assistance with washing of his hair.
5. The Psychological includes Adaptive Behavior Scale Scores in the very poor range in only Economic Activity and Socialization. His standard score was 3 in these areas. The report notes that, "Domain I scores primarily fell in the "average" range with no relative weakness or strength being noted." "Domain II scores were in "average" range with no relative weakness or strength noted." The evaluating Psychologist recommends continued training in social skills, personal care, communication, money management, recreation, safety and self direction. The Psychologist notes under placement: "\_\_\_\_\_ requires an ICF/MR level of care and should continue to benefit from CDCSP services."
6. Test results included in the Individualized Education Program, (IEP) report show language scores within the average range. The IEP reports that \_\_\_\_\_ has some sensory processing difficulties but that he has made significant improvements in this area. Goals outlined in the IEP are for 60 minutes per grade period for Speech/Language Pathology, no extended school year and 1% special education environment.
7. The claimant's Social History report of April 19, 2005 indicates that he has limited social interaction skills. He does seek same-age peers rather than adults. \_\_\_\_\_'s parents and his Social report indicate he continues to have problems with impulse control, which affects his behavior.
8. W V Dept. of Health & Human Resources Policy Manual, Eligibility Guide - Children With Disabilities Community Services Program:

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.

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:

- 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;
- B. Likely to continue indefinitely;
- C. 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

g. Economic Self-Sufficiency

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.

**VIII. CONCLUSIONS OF LAW**

1. Policy stipulates that to be medically eligible, the applicant must have substantial deficits in three (3) or more of the major life areas. Evidence and testimony do not support a finding of substantial deficits in three of the major life areas. Evidence does show that he has improved a good bit in his ability to interact and stay focused. There was also significant improvement in his sensory processing noted.
2. Policy also stipulates that the applicant must be at risk of institutionalization. Although the Psychologist recommends continued training in many areas, it was not demonstrated that this training should be provided in an institutional setting. \_\_\_\_\_ attends public school in regular classroom 99% of the time.

**IX. DECISION:**

Although the information presented at this hearing reveals that \_\_\_\_\_ continues to have some social interaction problems, it is the finding of the Hearing Officer that \_\_\_\_\_ has made much improvements and no longer meets the medical eligibility criteria for the CDCSP program. It is the ruling of this hearing officer that the action to discontinue 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 8th Day of March 2006**

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**State Hearing Officer**