



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 24, 2006

_____ for _____

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 23, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny medical eligibility for the Children with Disabilities Community Services (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.

Eligibility and benefit levels for the Children with Disabilities Community Services Program are determined based on current regulations. One of these regulations is to be eligible for the Children with Disabilities Community Services Program, 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 in-patient psychiatric facility for children (CDCSP Manual Section D, I).

The information which was submitted at the hearing revealed that _____ does not meet the medical criteria to be eligible for the Children with Disabilities Community Services Program as the documentation shows that he does not have substantial deficits in at least three (3) major life areas and does not require institutional level of care.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Children with Disabilities Community Services (CDCSP) Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Susan Striar-May, BMS

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

Claimant,

v.

Action Number: 05-BOR-6947

**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 January 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 January 23, 2006 on a timely appeal, filed November 10, 2005. It should be noted that the hearing was originally scheduled for January 17, 2006 but was rescheduled at Department's request.

It should be noted here that the claimant's benefits have been denied pending a hearing decision. It should also be noted that the claimant and the Department's representative (Susan Striar-May) testified by speaker phone as the claimant requested a telephone conference hearing.

II. PROGRAM PURPOSE:

The program entitled CDCSP is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The Department has chosen the option of providing Medicaid to disabled children, up to the age of 18, who can receive necessary medical services while residing in their family (natural or adoptive) homes or communities. 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:

1. _____, Claimant's mother (participating by speaker phone).
- 2 Susan Striar-May, Consultant, BMS (participating by speaker phone).

Presiding at the Hearing was Thomas M. Smith, 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 claimant meets the medical requirements of the CDCSP Program.

V. APPLICABLE POLICY:

CDCSP Manual
WV Income Maintenance Manual Section 16.7 D.
State Medicaid Manual Section 3589
Common Chapters Manual Section 780 D.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of denial notification letter dated 10-26-05.
- D-2 Copy of Program Eligibility Criteria (2 pages).
- D-3 Copy of Annual Medical Evaluation 9-16-05 (4 pages).
- D-4 Copy of Psychological Evaluation 9-14-05 (7 pages).
- D-5 Copy of Individualized Education Program (12 pages).

Claimant's Exhibits:

- CI-1 Copy of _____ County Schools Peabody Picture Vocabulary Test 4-26-05 (3 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was an initial applicant for the Children with Disabilities Community Services Program (CDCSP) when an application packet was sent by _____ Area Mental Health to the CDCSP Program for consideration of medical eligibility (Exhibits #D-3 through #D-5).
- 2) The packet was reviewed and the claimant was denied for medical eligibility with notification issued on 10-26-05 (Exhibit #D-1).
- 3) The claimant's hearing request was received by the Bureau for Medical Services (BMS) on 11-10-05 and by the State Hearing Officer on 11-23-05 and the hearing was convened by telephone conference on 1-23-06 after it was originally scheduled for 1-17-06 and was rescheduled at Department's request.

- 4) Exhibit #D-3 (Annual Medical Evaluation completed 9-16-05) gives a Mental Diagnosis as Developmental Delay and Physical Diagnosis as Speech Delay and Congenital Deafness and states that the claimant is ambulatory, is continent, needs mealtime assistance, needs assistance with personal hygiene, and needs close supervision with challenging behaviors. The report recommended ICF/MR level of care.
- 5) Exhibit #D-4 (Psychological Evaluation conducted 9-14-05) shows full scale IQ of 92, Vocabulary IQ of 73, that he has bilateral hearing loss, profound partially corrected with Cochlear Implant with no other known physical limits, that he can use basic sign and uses few words verbally, that he has little interaction with other children, that he is in the average range of intelligence, that the ABS scores show an eligible score only in Independent Functioning, that the scores noted they were for Mental Retardation (MR) Norms but actually were for Non-MR Norms, that his main developmental deficiency is with social interaction skills, that no diagnosis is given in Axis I or II, that there is no recommendation for ICF/MR level of care.
- 6) The Individualized Education Program (IEP) completed 5-25-05 (Exhibit #D-5) states that there are impairments in expressive and receptive language but that the claimant shows constant improvement in both areas and that he is in Regular Education classes 96% of the time and Special Education 4%.
- 7) Ms. Striar-May testified that the documentation shows that the claimant does not have an eligible diagnosis as he is not MR and deafness is not considered a related condition, that he may meet the criteria for substantial deficit in the area of expressive and receptive language but that he does not meet the criteria in the areas of self-care, learning, mobility, and self-direction, that he is too young to be considered for the areas of economic self-sufficiency and capacity for independent living, and that he does not require ICF/MR level of care.
- 8) Ms. _____ testified that she agreed with Ms. Striar-May's testimony but that she was under the impression that the CDCSP Program was not just for MR individuals, that her son was deemed eligible for SSI and it was taken away when they adopted him, that the IEP does show that he is in Regular Education classes 96% of the time but he has an aide with him throughout the day, and that he has delays in expressive language.
- 9) WV Income Maintenance Manual Section 16.7, D states, in part:

"The Dept. has chosen the option of providing Medicaid to disabled children, up to the age of 18, who can receive necessary medical services while residing in their family (natural or adoptive) homes or communities. 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.

This coverage group allows children to remain with their families by providing medical services, in the home or community, that are more cost-effective than care in a medical institution. It also eliminates the requirement that the income and assets of parents and/or legal guardians be deemed to the children.

A child is eligible for Medicaid as a CDCSP client when all of the following conditions are met:

The child has not attained the age of 18;

The child has been determined to require a level of care provided in a medical institution, nursing home, ICF/MR, hospital, or psychiatric facility;

He is expected to receive the necessary services at home or in the community.

The estimated cost of services is no greater than the estimated cost of institutionalization.

The child has been denied SSI eligibility because the income and assets of his parent(s) were deemed to him, and as a result, the SSI income or asset eligibility test was not met.

The Long-Term/Alt. Care Unit in the Office of Medical Services determines medical eligibility and notifies the county office and the case management agency of the decision in writing. Refer to Chapter 12 for details about determining medical eligibility."

10) State Medicaid Manual Section 3589 states:

Under Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248), States are allowed at their option, to make Medicaid benefits available to children (age 18 or under) at home who qualify as disabled individuals under Section 1614 (a) of the Social Security Act provided certain conditions are met, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. The specific statutory provisions establishing this option are contained in Section 1902 (e) of the Social Security Act.

This option is available even if you do not have an approved home and community-based services waiver. You are allowed to make Medicaid coverage available under this option without the burden of seeking approval, on a case-by-case basis, from the Secretary.

In order for a child to establish Medicaid eligibility under this option, determine that:

if the individual were in a medical institution, he/she would be eligible for medical assistance under the State plan for Title XIX;

the child requires a level of care provided in a hospital, skilled nursing facility, or intermediate care facility;

it is appropriate to provide the care to the child at home; and

the estimated cost of caring for the child outside of the institution will not exceed the estimated cost of treating the children.

Children meeting these standards would be eligible for Medicaid even though they were not receiving SSI cash assistance at home. Under the law these children are deemed, for Title XIX purposes only, to be receiving SSI, or a State supplemental payment. Of course, 209 (b) States which do not provide

Medicaid to disabled SSI and State supplement recipients under age 19 may not take advantage of this option.

In determining whether the child requires a level of care provided in a hospital, skilled nursing facility or intermediate care facility, determine that the child requires the level of care appropriate to these facilities as defined in 42 CFR 440.10 (hospital), 440.40 (skilled nursing facilities) or 440.150 (intermediate care facilities). If you elect this option you will need to provide coverage to all disabled children who meet the conditions. This is unlike the situation that exists for home and community-based waivers for which the law authorizes a waiver of the statewideness and comparability requirements."

11) CDCSP Manual Section D, I states, in part:

A LEVEL OF CARE CRITERIA

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....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;

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
- g. Economic Self-Sufficiency.

C. 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.

D. The applicant must have an Individual Program Plan (IPP) developed by an Interdisciplinary Team (IDT).....@

12). Common Chapters Manual Section 780 D states, in part:

AD. The Decision

The State Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing.....The hearing officer=s decision must also be based on facts as they existed at the time of the Department=s action or proposed action at issue.....

1. CASE DECISION REVERSED, RETROACTIVE PAYMENTS

If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse.....

2. CASE DECISION UPHELD

If the policy was properly and correctly followed, the State Hearing Officer will uphold.@

13) The area of dispute involves whether the claimant meets the medical criteria for the CDCSP Program. The medical criteria consists of having a mental or physical developmental impairment or a combination for a child requiring ICF/MR level of care, that the condition is likely to continue, that the applicant has substantial limitations in functionality including daily living areas of self-care, receptive or expressive language, learning, self-direction, mobility, capacity for independent living, and economic self-sufficiency, and that the applicant requires institutionalization in an ICF/MR facility. The Department determined, based on the documentation (Exhibits #D-3 through #D-5) that the claimant did not have an eligible diagnosis, that he did not meet the criteria for substantial deficits except for possibly in the area of receptive or expressive language, and that he did not require ICF/MR level of care. The State Hearing Officer finds that the documentation shows that the claimant does not have an MR related condition, that

he meets the criteria of substantial limitation only in the area of receptive or expressive language, and that he does not require ICF/MR level of care.

VIII. CONCLUSIONS OF LAW:

Regulations in the CDCSP Manual under Program Eligibility Criteria requires that the applicant require a level of care provided in an ICF/MR facility and that the documentation demonstrates that he has a mental or physical developmental impairment for a child requiring ICF/MR level of care, that the condition is likely to continue, that the condition substantially limits functioning in three or more of the major life areas which include Self-Care, Receptive or Expressive Language, Learning, Mobility, Self-Direction, Capacity for Independent Living, and Economic Self-Sufficiency. The claimant has does not have a mental or physical developmental impairment which is related to MR. The claimant does not require ICF/MR level of care. The claimant's condition limits functioning only in the area of Receptive or Expressive Language. The claimant does not meet the medical criteria for the CDCSP Program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to deny medical eligibility for the CDCSP Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of January, 2006

Thomas M. Smith
State Hearing Officer