



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 III  
Governor

Martha Yeager Walker  
Secretary

August 22, 2007

By \_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your son's hearing held August 2, 2007. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for Children with Disabilities Community Services Program (CDCSP) benefits.

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 a risk of institutionalization.

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

Sincerely,

Sharon Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Susan Striar May, BMS  
Erika Young, Chairman, BOR

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

\_\_\_\_\_  
by \_\_\_\_\_

**Claimant,**

**v.**

**Action Number: 07-BOR-1509**

**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 August 2, 2007 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 August 2, 2007 on a timely appeal filed June 1, 2007.

It should be noted here that the claimant=s application for the CDCSP Program has 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 Witnesses:  
\_\_\_\_\_, Claimant's father

Department's Witnesses:  
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 Memo to Community Services Manager of denial dated April 5, 2007
- D-2 CDCSP Program Eligibility Criteria
- D-3 Psychological Evaluation dated March 3, 2007
- D-3a Addendum to Psychological Evaluation
- D-4 Developmental Update from [REDACTED] Consulting dated March 27, 2007
- D-5 Evaluation/Assessment Summary-Update from WVBTT dated March 23, 2007
- D-6 Occupational Therapy Progress, Building Blocks, Report dated March 20, 2007
- D-7 Occupational Therapy Evaluation, [REDACTED] County Schools dated February 19, 2007
- D-8 Eligibility Committee Report dated March 15, 2007
- D-9 IEP, [REDACTED] County Schools, dated March 15, 2007
- D-10 Social History, dated March 30, 2007
- D-11 Annual Medical dated February 1, 2007

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

- 1) The parents of the claimant submitted an application packet to the Bureau of Medical Services in April 2007 to determine if he would qualify for services under the Children with Disabilities Community Services Program (CDCSP). The Bureau of

Medical Services reviewed the documents submitted and determined that based on the information made available to them that their son did not meet the medical criteria for the program.

- 2) The Department sent a denial notice on April 5, 2007 advising that according to the documentation submitted the child does not have substantial adaptive deficits in three major life areas and therefore is not eligible for ICF/MR level of care. In addition, the child is not at risk of institutionalization, which is also a criteria for the CDCSP program.
- 3) The claimant is a 3-year-old male. An Annual Medical Evaluation, Exhibit D-11, completed on February 1, 2007 reports the child to have delayed speech and some sensory integration issues. The father stated that his main concern is for his son's speech and language deficits. This report indicated that the child could eat independently, is not yet toilet trained and that he needs some assistance with ambulation and self-care.
- 4) A Psychological Evaluation, Exhibit D-3, dated April 1, 2007 issued a diagnosis of Pervasive Developmental Disorder, NOS and Autistic-like characteristics. Under Psychomotor, this report states that he is able to walk, throw a ball, climb on furniture, run, use stairs and jump. Under Self-Help, this document reports that he has the ability to use a spoon and a fork. He indicates when his diaper is wet or soiled. He is able to make his wants and needs known. He is unable to take off clothing that opens in the front or pull up elastic waistbands. Under Language, it reports he understands the meaning of no. He points to pictures and books and to body parts and follows instructions. He is able to say between 50 and 100 words. These words are understandable when he gives them in context.
- 5) Vineland Adaptive Behavior Scale scores were provided with the above Psychological. This report notes that scores at or below two standard deviations (70 and below) indicate significant delays. The claimant scored 73 in communication, 84 in Daily Living Skills, 72 in Socialization, 85 in Motor Skills and 72 as an Adaptive Behavior Composite score. None of these scores were 70 or below.
- 6) An evaluation assessment, Exhibit D-5, notes a delay in speech. Occupational Therapy Progress Report, Exhibit D-6, reports that his performance in personal care activities is within the normal range for his age and that his speech has improved greatly. It reports that he communicates most of his needs verbally, using a large vocabulary, and many 3, and some 4-word sentences.

- 7) The claimant's father testified of his understanding of the program's eligibility criteria and that his main concerns were for his son to obtain the speech therapy he needs. His employer sponsored medical insurance has denied coverage but he has since found a program through [REDACTED] Hospital, which is providing the service free.
- 8) The Federal Code of Regulations, found at 42 CFR § 435.225, states that individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case that the following conditions are met:

- 1) The child requires the level of care provided in a hospital, SNF, or ICF.
- 2) It is appropriate to provide that level of care outside such an institution.
- 3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

- 9) Regulations found at 42 USC § 1396a (e) (3) state:

(3) At the option of the State, any individual who-

(A) Is 18 years of age, or younger and qualifies as a disabled individual under section 1382c (a) of this title;

(B) With respect to whom there has been a determination by the State that-

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) If the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter,

shall be deemed, for the purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter IVI of this chapter.

- 10) The West Virginia Department of Health and Human Resources Eligibility Guide Children with Disabilities Community Services Program (09/01/94) – Program Eligibility Criteria: I. LEVEL OF CARE CRITERIA states:

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), 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:
  - 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
  - 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) consisting of the child, family or legal representative, service providers, advocate, professionals, paraprofessionals and other stakeholders needed to ensure the delivery of the necessary level of services and develop a comprehensive IPP in accordance with Medicaid policies. The IPP must include:

1. Instructional (behavioral) objectives, applicable to the type of disability, developed with professional oversight and supervision aimed at teaching the child skills which will maintain, increase and/or support his/her independence in the activities of daily living and inclusion in community life; and
2. Services provided or supervised by qualified professionals aimed at increasing, maintaining and/or restoring the child's skills and/or health to the best physical, intellectual and/or social level that presently or potentially may be achieved.

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

- (1) Regulations for the CDCSP program require that substantial limitations in functioning must exist in three (3) or more of the major life areas. It further requires that the child at the time of application require the level of care provided in an intermediate care facility for individuals with Mental Retardation and/or related conditions.
- (2) The Vineland scores indicate that this applicant is not demonstrating substantial delays as compared to other children his age. Testimony and evidence did not support that this applicant has substantial delays in three or more of the major life areas.
- (3) It is evident that this child does exhibit some mild delays resulting from his diagnosed Pervasive Developmental Disorder. His delays may progress to be more evident as he matures and is compared to his peers. At this time, the documentation supports that this claimant does not exhibit the level of delay, which is required for medical eligibility for the CDCSP program. It does not support that this child requires the level of services that are provided in an ICFMR facility.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny 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 22 Day of August, 2007**

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**Sharon K. Yoho**  
**State Hearing Officer**