



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 11, 2007

_____ for

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 21, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid through the Children with Disabilities Community Services Program (CDCSP).

In arriving at a decision, the State Hearings 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 inpatient psychiatric facility for children (CDCSP Manual effective September 1, 1994).

The information submitted at your hearing fails to demonstrate that your daughter's current medical condition requires an acute care hospital level of care.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for Medicaid coverage through the Children with Disabilities Community Services (CDCSP) Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Susan Striar May, BMS

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

_____,
Claimant,

v.

Action Number: 06-BOR-2689

**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 11, 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 originally convened on December 21, 2006 on a timely appeal filed August 7, 2006.

II. PROGRAM PURPOSE:

The Program entitled Children with Disabilities Community Services Program (CDCSP) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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/Representative

_____, Claimant's Father

Ann Suprano, Service Coordinator, WV Birth to Three

██████████ Claimant's Grandfather

Susan Striar May, Consultant, BMS (by phone from BMS)

Dr. Sandra Joseph, M.D., BMS (by phone from BMS)

Presiding at the Hearing was Thomas E. Arnett, 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 Department was correct in its action to deny the Claimant's application for Medicaid through the CDCSP Program.

V. APPLICABLE POLICY:

WV DHHR Eligibility Guide for Children with Disabilities Community Services Program (CDCSP), September 1, 1994
West Virginia Income Maintenance Manual, Chapter 16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Denial Notice – Memorandum dated July 12, 2006
- D-2 Annual Medical Evaluation for Children with Disabilities Community Services Program (DD-2a), dated 11/7/05.
- D-3 Emergency Room visit (medical record) from 2/12/05 at St. Joseph's Hospital
- D-4 Emergency Room visit (medical record) from 10/24/05 at St. Joseph's Hospital
- D-5 Psychological Evaluation dated 11/4/05
- D-6 Social History dated 1/12/06
- D-7 Speech Language Therapy Evaluation dated 5/24/05
- D-8 WV Birth to Three Individualized Family Service Plan dated 5/24/05
- D-8a WV Birth to Three IFSP Review (6 month review) dated 11/29/05
- D-8b WV Birth to Three Teaming Activity (Meeting Date 1/10/06)
- D-9 Correspondence to [REDACTED] from Camden-Clark Audiologist [REDACTED] dated 6/6/05.
- *D-10 Medical Records from Children's Hospital – [REDACTED] 3/1/05 to 1/5/06.

*Indicates that the exhibit was received subsequent to the hearing as agreed by all parties.

VII. FINDINGS OF FACT:

- 1) On or about July 12, 2006, the Claimant was notified via a Memorandum (Exhibit D-1) from the Department's Office of Behavioral and Alternative Health Care that she did not meet the medical eligibility criteria for participation in the Children with Disabilities Community Services Program, hereinafter CDCSP. This notice states:

Thank you for submitting the information requested. A comprehensive review of all the documentation submitted was conducted. There have been no Emergency Room visits noted since October 2005 and no hospital admissions for more than one year. In addition, physicians' notes state she is "doing well, no concerns", "no real change", and "essentially unchanged". Given this information, _____ does not appear to be at risk for acute care hospital level of care and therefore not qualify for CSCSP {sic}.

- 2) As a matter of record, all parties agreed that although the Department evaluated the Claimant for medical eligibility under all four (4) different levels of care criteria (Acute care hospital, ICF/MR, NF and Psychiatric Facility), the Claimant's application for CDCSP medical eligibility is based on the "acute care hospital" level of care. As a result, this decision will focus solely on the Claimant's eligibility based on the acute care hospital level of care.
- 3) The Department's representatives testified that the "acute care hospital" level of care is required by children who are so medically needy that they consistently require inpatient care or the level of care that an acute care facility provides. The Department cited Exhibits D-2, D-3, D-4 and D-10 as the reason the Claimant failed to meet the medical eligibility under the acute care hospital level of care and noted the following pertinent findings:

Exhibit D-2 indicates on page 4 that the Claimant has a diagnosis of Cystic Fibrosis and her physician has certified that she requires an acute care hospital level of care. While the Department noted the physician did not certify that "as an alternative this child can be served by the CDCSP Program," this was not a reason for denial. The Department also pointed out that the physician wrote "Intermittent inpatient hospital stays are necessary." According to the Department, this statement is not compatible with an individual who requires inpatient / acute care hospital level of care on a consistent basis.

Dr. Sandra Joseph testified that the medical records of every CDCSP applicant are reviewed from the date of application back to one (1) year. In this case, medical records were reviewed from February 2006 (the date of application) to February 2005. Dr. Joseph testified that the information submitted on behalf of the Claimant indicates that she has not been hospitalized or received inpatient care in the last year. Exhibits D-3 & D-4 were reviewed for eligibility and while the Claimant made two emergency room, hereinafter ER, visits during the one-year look-back period, neither of the ER visits resulted in a hospital stay/inpatient status for the Claimant.

Department's Exhibit D-10 includes physician's notes from seven (7) visits to the [REDACTED] Children's Hospital, four (4) radiology reports, and an Infant Pulmonary Lab. These documents include encouraging physician's notes with no noted instability in the Claimant's overall condition, a growth chart that shows a normal progression of growth, and pulmonary labs show no deterioration in her pulmonary function. A thorough review of Exhibit D-10 confirms Dr. Joseph's findings. The physician's notes are optimistic and there is no evidence to indicate that the Claimant received inpatient hospital care or was at a risk of being institutionalized.

- 4) The Claimant's mother/representative testified that she is a Registered Nurse (RN) and that there have been several occasions when a layperson would have had to take a similarly situated child to the ER. She stated that because she is employed as a RN at [REDACTED] Hospital, she has access to the lab which has allowed her to have urine specimens tested for urinary tract infections, throat swabs, etc. She stated that she and the Children's Hospital do everything they can to keep her child out of the emergency room and curtail medical complications. She testified that her daughter's health continues to be fragile and that she can deteriorate quickly if she doesn't immediately identify potential medical problems. The Claimant's mother testified that she feels like she is being penalized because she is a medical professional who is able to take care of medical problems that a layperson would not.

- 5) Medicaid Program Instruction MA-94-41, dated August 29, 1994 (effective September 1994), states that the Children with Disabilities Community Services program option allows the state to offer Medicaid coverage to a child:
1. Who lives with his/her biological or adoptive family and;
 2. Who has a disability that qualifies him/her to receive Supplemental Security Income (SSI) but who is denied SSI because his/her parents' income exceeds the Social Security Administration guidelines, and;
 3. Whose care requires the level of services provided in one of the following medical facilities:
 - A. Acute care hospital;
 - B. Intermediate Care Facility for Individuals with Mental Retardation and/or Related Conditions (ICF/MR);
 - C. Nursing Facility;
 - D. Psychiatric Facility; and
 4. Whose care is provided in his/her home and community setting at the same level of quality and at least as cost effectively as in a comparable medical institution.
- 6) Medicaid Program Instruction MA-94-41, dated August 29, 1994 (effective September 1994), includes a section entitled Program Eligibility Criteria on page 8. Section I.A & B states that the applicant, at the time of application, must require the level of care provided in an acute care hospital. Level of care determinations are made from a medical evaluation (Form DD-2A CDCSP) for applicants requiring hospital level of care.
- 7) WV Income Maintenance Manual Section 16.7.D states, in part:

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.

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 Care Unit in the Bureau for Medical Services determines medical eligibility and notifies the county office and the case management agency of the decision in writing.

VIII. CONCLUSIONS OF LAW:

- 1) As a condition of medical eligibility, the policy that governs the CDCSP Program states that the applicant must require an acute care hospital level of care at the time of application.
- 2) The evidence submitted to establish eligibility in this case fails to demonstrate that the Claimant requires acute care hospital level of care. While it is clear that the Claimant's mother does an extraordinary job maintaining and treating her daughter's fragile medical condition, there are no provisions in policy to make exceptions for medical complications that "could" or "might" require an acute care hospital level of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for participation in the CDCSP Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of January, 2007

**Thomas E. Arnett
State Hearing Officer**