



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 30, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 8, 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 son's current medical condition requires an ICF/MR 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,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

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

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

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

**v.**

**Action Number: 06-BOR-3155**

**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 December 8, 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 December 8, 2006 on a timely appeal filed October 12, 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

\_\_\_\_\_, Claimant's father

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

Presiding at the Hearing was Cheryl McKinney, 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 Children with Disabilities Community Services Program (CDCSP).

#### **V. APPLICABLE POLICY:**

WV DHHR Eligibility Guide for Children with Disabilities Community Services Program (CDCSP)

West Virginia Income Maintenance Manual, Chapter 16

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

##### **Department's Exhibits:**

- D-1 Denial Notice – Memorandum dated September 22, 2006
- D-2 Level of Care Criteria from CDCSP Manual (2 pages)
- D-3 Psychological Evaluation dated March 17 and March 21, 2006
- D-4 Confidential Educational Evaluation Report dated completed April 5, 2006
- D-5 Copy of Individualized Education Program form dated April 14, 2006 (16 pages)

##### **Claimant's Exhibits:**

- C-1 Copy of letter from [REDACTED] dated January 10, 2006

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

- 1) On or about September 22, 2006 the Claimant was notified via a Memorandum (Exhibit D-1) from the Department's Office of Behavioral and Alternative Health Care that he 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. According to the documentation at this time \_\_\_\_\_ does not have substantial deficits in three major life areas and therefore is not eligible for ICF/MR level of care. In addition, \_\_\_\_\_ is not at risk of institutionalization which is also a criteria for the Children with Disabilities Community Services Program.

- 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 "ICF/MR" level of care. As a result, this decision will focus solely on the Claimant's eligibility based on the ICF/MR level of care.

- 3) The Department's representative testified that the "ICF/MR" facility is an Intermediate Care Facility structured to house and care for children with mental retardation and/or related conditions. The ICF/MR level of care is available for children who have severe developmental disabilities. The Department testified to be eligible the applicant must demonstrate a diagnosis of severe, chronic disability which is attributable to a mental or physical developmental impairment, or a combination of mental and physical developmental impairments, with substantial limitations in three or more of the following major life activities: self care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency. (D-2) The Department did not evaluate the Claimant in the areas of capacity for independent living and economic self-sufficiency due to his young age of five (5) years. The Department cites Exhibits D-3, D-4 and D-5 as the reason they determined the Claimant failed to meet medical eligibility under the ICF/MR level of care and noted the following pertinent findings:

Exhibit D-3 is a Psychological evaluation completed in March 2006 which lists the Claimant as being a five (5) year old male child who is exiting preschool. The Background Information section indicates the Claimant has been diagnosed with Down syndrome and also has a medical history of heart surgery to correct ASD and surgery to correct an umbilical hernia and revise his circumcision. Results from the Stanford-Binet Intelligence Scales, Fifth Edition (SB5) test indicate the Claimant scored a full scale IQ of 63, which is considered "mildly impaired". Other parts of the test were scored as borderline, mildly impaired or low average. Results from the Vineland Adaptive Behavior Scales-II (Informant-mother) test indicated a composite score of 66, which is considered "mildly impaired." The Department testified this is a test that is completed by the mother to gauge the Claimant's performance. The mother is asked a series of questions regarding the Claimant's abilities. Results from the Vineland Adaptive Behavior Scales-II (Informant: Special Education Teacher) test indicated a composite score of 68, which is considered "mildly impaired." The Psychological evaluation indicates on page four (4) that the Claimant's difficulties include mild impairment in level of intellectual functioning and cognitive functioning. The Claimant's weakest area of performance is Fluid Reasoning, thus his ability to solve verbal and nonverbal problems using inductive or deductive reasoning is in the mildly impaired range. The Claimant is shown as "mildly impaired" in adaptive skills.

Exhibit D-4 is the Confidential Education Evaluation Report completed April 4, 2006 which indicates an assessment was performed using the Woodcock-Johnson III Tests of Achievement (Form A). The results of this test indicate the Claimant scored 83 in Letter-Word Identification, 100 in Passage Comprehension, and 57 in Applied Problems. The Department testified that the score of 83 is considered borderline, 100 is considered average, and 57 is considered mildly impaired.

Exhibit D-5 is the Individualized Education Program (IEP) form completed April 14, 2006, which is a form completed by a group of individuals, including the Claimant's parents, numerous teachers and school personnel on behalf of the Claimant in order to plan for his future educational needs. Part IV of this form contains information about the Claimant's present levels of academic achievement and functional performance, and indicates the Claimant has appropriate behavior most of the time in a small group or in a one on one instructional setting. He plays very appropriately and is not aggressive with peers. He joins groups of peers in pretend play. He has a good sense of humor. The Claimant feeds himself with some help to open containers, straws are still needed. He tends to spill liquids when using a cup. He wears underwear and stays dry during the three (3) hour session. He needs some

assistance in the bathroom. He takes off and hangs coat and backpack daily with some reminders and prompting. He is able to use scissors with assistance. He can count to 7 consistently aloud, touching objects in a row as he counts, matches numbers to sets (1-3), recognizes and identifies numbers 1 through 3. He can sort by color, shape, size with varying attention, and is able to match pictures, letters and simple words. He can read his own name. The Claimant can also use a “mouse” to click objects on the computer and is learning to “drag” objects. He is independent in walking throughout the school environment including uneven and grassy slopes. He does need some assistance in manipulation with movement such as opening doors and carrying objects, as well as boarding and exiting the school bus. He needs adult supervision on the playground equipment, parking area and moving through the school in congested areas. Under Part VIII the Claimant is listed as having “communication needs”. Under Part IX the Claimant is listed as spending 73% of his time in a Regular Education Environment and 27% of time in a Special Education Environment. The Claimant’s mother indicated the Claimant is now in a Special Education setting most of the time due to changes in school policy and not directly related to the Claimant’s needs.

- 4) The Department testified that the information submitted by the Claimant during the application process shows that although he has Down syndrome, he is functioning at a high level currently and his disabilities are not considered severe, and therefore he does not meet the program requirements for the Children with Disabilities Community Services Program (CDCSP). In addition, the Claimant is not at risk of institutionalization which is also a criterion for the Children with Disabilities Community Services Program (CDCSP).
- 5) The Claimant’s mother testified that she disagrees with the Department’s decision that the Claimant does not meet any of the major life activities requirements. She stated in the area of “self care” the Claimant is not able to care for himself and must be assisted with everything. She stated “his expressive language is bad.” She has a difficult time communicating with him and understanding his language. She stated he has problems learning and is qualified to be attending the Special Education classes at school. The Department indicated they recognize and agree that the Claimant has disabilities, but they are not severe enough at this time to meet the requirements for the program.
- 6) The Claimant’s mother testified that they are primarily interested in the CDCSP program to provide medical coverage for their child. She indicated she is having difficulty getting her primary insurance company to cover all the Claimant’s medical needs. She stated the insurance company denies any billing submitted with a diagnosis of Down syndrome. She indicated the insurance company tells them the Claimant should be eligible for Medicaid and use this as a reason for denial. She says that her child has “fallen through the cracks” of the system. The Claimant’s mother presented a letter from the Claimant’s physician (C-1) indicating the child has heart problems that need to be monitored regularly.
- 7) 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.
- 8) 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.
- 9) 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 ICF/MR level of care at the time of application.
- 2) The evidence submitted to establish eligibility in this case fails to demonstrate that the Claimant's disabilities are severe enough to require ICF/MR 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 30<sup>th</sup> Day of January, 2007**

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**Cheryl McKinney  
State Hearing Officer**