



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 w Washington Street
Charleston, WV 25313
304-746-2360 Ext 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 16, 2008

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your daughter=s hearing held February 28, 2008. 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 daughter's limitations are not at the substantial level required for the program and she 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,

Jennifer Butcher State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, BOR
Patricia Winston, Behavioral and Alternative Health Care
[REDACTED] WV Birth to Three

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

Claimant,

v.

Action Number:08-BOR-745

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

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 28, 2008 on a timely appeal filed August 27, 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

Department's Witnesses:

Patricia Winston, Acting Director for behavioral and Alternative Health Care

Linda Workman, BMS Psychologist Consultant
Joann Ranson RN, Bureau of Medical Services

Claimant's Witnesses:

_____, father of _____ Claimant

_____, mother of _____ Claimant

_____, Coordinator, WV Birth to Three

_____, Ed.S National Certified School Psychologist

Presiding at the hearing was Jennifer Butcher, 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:

DHS-1 Comprehensive Psychological Evaluation dated June 22, 2007 by _____ Licensed Psychologist

DHS-2 Revised Edition of July 1, 2007 of the Children with Disabilities Community Services Program Eligibility Guide

DHS-3 Notification of denial letter dated July 31, 2007

DHS-4 Confidential Psychological Report dated November 27, 2007 by _____

DHS-5 Notification of denial letter dated January 4, 2008

VII. FINDINGS OF FACT:

- 1) The parents of the claimant submitted an application packet to the Bureau for Medical Services in June 2007 to determine if their daughter 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 daughter did not meet the medical criteria for the program.

- 2) The Department sent a denial notice on July 31, 2007 (DHS-3 Exhibit) 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, [REDACTED] is not at risk of institutionalization which is also a criteria for Children with Disabilities Community Service Program."
- 3) Again the Claimant's parents sent additional information to be reevaluated for services and the second denial letter was sent on November 27, 2007 to the claimant (DHS-5 Exhibit).
- 4) The claimant is a 4 month old little girl who is able to do most things a 4 month old is able to do. According to testimony from Department Psychologist the Claimant was diagnosed with Down's syndrome and because of her young age most assessments are not very reliable. The Bureau had to use what was submitted in the second packet to consider eligibility.
- 5) According to the testimony from the Department Psychologist the only cognitive assessment in the documents that was submitted for review was the Bayley Scales of Infant and Toddler Development 3rd Edition. The Cognitive section which produced an average score of 70, the upper level of Mental Retardation for the level of care, this is considered as a mild level of delay. People who score in the upper end of the range of mild Mental Retardation typically do not require an Intermediate care Facility for Individuals with Mental Retardation and /or related Conditions here after known as (ICF/MR) level of care. People, who score in this level are employable, achieve functional academics but this is per individual. Again with the young age of claimant it was difficult to assess her.
- 6) The Comprehensive Psychological Evaluation dated November 27, 2007 (DHS-4 Exhibit) page 5 of the report reveals the composite score of each of the subsections of III Current Evaluation , Intellectual/Cognitive 70, Adaptive Behavior 70, Language 77, Motor 52, and Social-Emotional 70. All scores but one is above the standard deviation score of 55. The Claimant's Fine and Gross Motor skills score of 52 shows a substantial delay giving her limited function in the major life areas.
- 7) "The Federal Code of Regulations, found at 42 CFR § 435.225, addresses individuals under age 19 who would be eligible for Medicaid if they were in a medical institution and reads:"

(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.

8) 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.

9) 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.
- 10) The parents of the claimant were mostly concerned with the out of pocket cost and the need for a medical card to pay for the services needed for their daughter. It was noted the parents understood after the explanation by the Department's Psychologist why she was not eligible for the Children with Disabilities Community Service Program, but wanted to know if there was any Medicaid program that would help with the cost.

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 Bayley scores indicate that this applicant is only demonstrating substantial delays in one area compared to other children her 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 her diagnosed Down's syndrome. Her delays may progress to be more evident as she matures and is compared to her 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 17th Day of April, 2008

**Jennifer Butcher
State Hearing Officer**