



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

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

May 7, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1141

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Taniua Hardy, Department Representative

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

██████████,

**Claimant,**

**v.**

**Action Number: 15-BOR-1141**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 15, 2015, on an appeal filed January 26, 2015.

The matter before the Hearing Officer arises from the January 8, 2015 decision by the Respondent to deny the Claimant's eligibility for the Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by ██████████. Observing the hearing was Taniua Hardy. The Claimant was represented by his mother and guardian, ██████████. Appearing as a witness for the Claimant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 526: Children with Disabilities Community Services Program (CDCSP), §526.6
- D-2 Notice of Decision, dated January 8, 2015
- D-3 CDCSP Level of Care Evaluation (DD-2A CDCSP), dated November 13, 2014
- D-4 Psychological Evaluation, dated November 21, 2014
- D-5 Social History form, dated November 15, 2014
- D-6 Cost Estimate forms
- D-7 Letter from the Social Security Administration, dated April 25, 2013

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

- C-1 Letter from the Social Security Administration
- C-2 Page from an altered copy of the November 13, 2014 DD-2A CDCSP form
- C-3 Individualized Education Program (IEP), dated March 25, 2015

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Claimant was approved for the Intellectual/Developmental Disabilities (I/DD) Waiver Program and was receiving CDCSP services while waiting on a slot for I/DD services. Individuals in this situation must reestablish medical eligibility annually.
- 2) The Claimant was notified of his failure to reestablish medical eligibility in a January 8, 2015 (Exhibit D-2; the 2014 date on this letter is a typographical error) notice of decision. This notice provides the reason for denial was "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/MR Eligibility."
- 3) The Claimant established the presence of a substantial adaptive deficit in one major life area identified for program eligibility: Self-Care.
- 4) [REDACTED], representative for the Respondent, testified that she is a licensed psychologist employed by [REDACTED]. ([REDACTED]) – a firm contracted by the Respondent to make eligibility determinations for CDCSP. Ms. [REDACTED] made the eligibility determination regarding the Claimant.
- 5) Ms. [REDACTED] reviewed the psychological evaluation of the Claimant (Exhibit D-4) as part of her eligibility determination. This evaluation includes the Claimant's scores on two different standardized measures of adaptive behavior: the Developmental Profile – 3 (DP-3, classified as a measure of intellectual or cognitive ability, but considered by the Respondent in the assessment of the major life area of Receptive or Expressive Language) and the Adaptive Behavior Assessment System – Second Edition (ABAS-II).
- 6) The Claimant received a DP-3 score of 62 in the area of Communication. This score is in the first percentile, not less than the first percentile. (Exhibit D-4, page 3)

- 7) The Claimant received ABAS-II scores of two (2) in the skill areas of Self-Care, Community Use, and Health and Safety. Standard scores of two (2) on this instrument are accepted as eligible scores because they include results from the sample that are “less than one percentile.” The Claimant did not receive eligible ABAS-II scores in any other skill area. The skill area of Self-Care corresponds with the major life area of the same name. The skill areas of Community Use and Health and Safety correspond with two subdomains of the major life area of Capacity for Independent Living with the same name.
- 8) The Claimant submitted documents for this hearing (Exhibits C-1, C-2, and C-3) that were reviewed by Ms. [REDACTED] prior to the hearing. Ms. [REDACTED] testified that she was unable to change her initial medical eligibility determination based on this information.
- 9) [REDACTED], the Claimant’s mother, testified regarding the Claimant’s problems, noting that he would not eat if she were not there to care for him. Ms. [REDACTED] was the reporter for both the DP-3 and ABAS-II instruments.
- 10) [REDACTED] testified that the Claimant jumps or hops to get around, and requires a special needs stroller. Ms. [REDACTED] testified that the Claimant is unable to explain illnesses and has problems with safety awareness.

### **APPLICABLE POLICY**

The policy regarding medical eligibility for CDCSP is located in the Bureau for Medical Services Provider Manual, Chapter 526, at §526.6. The policy regarding the functionality component of medical eligibility, at §526.6.2, reads as follows:

#### **526.6.2 Functionality**

Substantially limited functioning in three (3) or more of the following major life areas; (“substantially limited” is defined on standardized measures of adaptive behavior scores as three (3) standard deviations below the mean or less than (1) one percentile when derived from non MR normative populations (when mental retardation has not been diagnosed) or in the average range or equal to or below the seventy-fifth (75) percentile when derived from MR normative populations. The presence of substantial deficits must be supported by not only the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological, the IEP, Occupational Therapy evaluation, narrative descriptions, etc.)

– **Self-care** refers to such basic activities such as age appropriate grooming, dressing, toileting, feeding, bathing, and simple meal preparation.

- **Receptive or expressive language** (communication) refers to the age appropriate ability to communicate by any means whether verbal, nonverbal/gestures, or with assistive devices.
- **Functional Learning** (age appropriate functional academics)
- **Mobility (motor skills)** refers to the age appropriate ability to move one's person from one place to another with or without mechanical aids.
- **Self-direction** refers to the age appropriate ability to make choices and initiate activities, the ability to choose an active lifestyle or remain passive, and the ability to engage in or demonstrate an interest in preferred activities.
- **Capacity for independent living** encompasses sub-components that are age appropriate for home living, socialization, leisure skills, community use and health and safety.

## **DISCUSSION**

The Respondent discontinued the Claimant's participation in CDCSP based on unmet medical eligibility. The unmet medical eligibility component noted on the denial notice was functionality. The policy regarding functionality relies on the concept of "substantial deficits," and defines this concept strictly in terms of test scores "derived from a standardized measure of adaptive behavior." The Claimant did not establish eligibility on this basis. Narrative descriptions in evidence or testimony may not substitute for lacking eligible test scores; they can only support existing eligible results. Testimony and evidence on the Claimant's behalf neither questioned the validity of those results nor provided an alternative that demonstrated eligibility. The decision of the Respondent to terminate the Claimant's eligibility for CDCSP was correct.

## **CONCLUSIONS OF LAW**

- 1) Policy for CDCSP requires the demonstration of substantial deficits in at least three major life areas (also identified by policy). Because the Claimant only demonstrated a substantial deficit in one major life area, the functionality component could not be established.
- 2) Because the functionality component could not be established, medical eligibility for the program could not be established and the Claimant's CDCSP services must be terminated.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of the Claimant's CDCSP services.

**ENTERED this \_\_\_\_ Day of May 2015.**

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**Todd Thornton  
State Hearing Officer**