



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 14, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1825

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1825

**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 May 14, 2015, on an appeal filed April 20, 2015.

The matter before the Hearing Officer arises from the March 23, 2015, decision by the Respondent to terminate the Claimant's participation in the Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by ██████████, consulting psychologist with the Bureau for Medical Services. The Claimant appeared by his mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual §526.6
- D-2 CDCSP Level of Care Evaluation (Form DD-2A) dated November 25, 2014
- D-3 Report of Psychological Evaluation dated December 19, 2014
- D-4 Social History (Form DD-4)
- D-5 Denial Letter from Social Security Administration dated February 19, 2015
- D-6 Renewal Application Denial dated March 23, 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 a recipient of CDCSP services effective September 2013. A renewal application was submitted on behalf of the Claimant in January 2015. The Department issued a Notice (D-6) on March 23, 2015, advising that the Claimant's renewal application had been denied.
- 2) The Respondent's expert witness, [REDACTED], testified that the Claimant was approved for the I/DD Waiver program in 2012, but was placed on a waiting list to receive services. Based on the Claimant's eligibility for the I/DD Waiver program, the Claimant was found medically eligible for CDCSP services.
- 3) Ms. [REDACTED] reviewed the Claimant's renewal application for CDCSP services that was submitted, and testified that the Claimant has a potentially eligible diagnosis (D-2) of Cerebral Palsy to meet the diagnostic criteria for the program. However, the psychological evaluation (D-3) that was submitted did not contain any tests that measured the Claimant's adaptive behaviors to determine if the Claimant met the functionality criteria of substantial adaptive deficits in at least three (3) of the six (6) major life areas identified in policy. Ms. [REDACTED] noted the psychological evaluation that was submitted was performed by school psychologist and as a result, only intellectual tests were administered.
- 4) The Claimant's mother, [REDACTED], testified that the facility that she had taken the Claimant to previously for psychological evaluations was no longer in business and due to time constraints, asked the school psychologist to evaluate him. Ms. [REDACTED] stated the school psychologist would not use the CDCSP form she provided to report the results of the evaluation. Ms. [REDACTED] contended that her son continued to meet the eligibility requirements for the program.

APPLICABLE POLICY

The policy regarding medical eligibility for CDCSP is located in the WV Medicaid Provider Manual. 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 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 documentation submitted with the Claimant's renewal application failed to include any testing of the Claimant's adaptive behaviors. Without a measure of the Claimant's adaptive behaviors, substantial deficits could not be identified to establish continued participation in the program.

CONCLUSIONS OF LAW

Whereas the Claimant failed to meet the functionality criteria as found in policy to continue receiving CDCSP services, medical eligibility could not be established.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of the Claimant's participation in the Children with Disabilities Community Services Program.

ENTERED this 14th day of May 2015

Kristi Logan
State Hearing Officer