



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

July 15, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2076

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Taniua Hardy, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2076

**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 July 9, 2015, on an appeal filed April 16, 2015.

The matter before the Hearing Officer arises from the April 13, 2015 and the subsequent April 30, 2015 decisions by the Respondent to deny the Appellant's renewal application for benefits through the Children with Disabilities Community Services (CDCSP).

At the hearing, the Respondent was represented by ██████████, Psychologist Consultant for the Bureau for Medical Services. The Appellant was represented by her mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Regulations Chapter 526, Sections 526.6, 526.6.1 and 526.6.2
- D-2 CDCSP Level of Care Evaluation dated February 16, 2015
- D-3 Psychological Evaluation dated February 3, 2015
- D-4 Early Intervention Speech-Language and Developmental Feeding Re-Evaluation dated December 24, 2014
- D-5 Notice of Denial dated April 30, 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) On or about April 30, 2015, the Appellant was notified via a Notice of Denial (D-5) that her Children with Disabilities Community Services Program (CDCSP) renewal application had been denied. The notice advises that benefits were denied because documentation submitted for review did not support the presence of substantial adaptive deficits in three (3) of the six (6) major life areas identified for CDCSP eligibility.
- 2) [REDACTED], Psychologist Consultant for the Bureau for Medical Services, testified that while the Appellant, age two (2), has a potentially-eligible diagnosis of cerebral palsy, documentation fails to demonstrate that the Appellant's condition meets severity criteria as it fails to support the presence of substantial deficits in any of the six (6) major life areas identified for program eligibility.

Ms. [REDACTED] reviewed Exhibit D-2, a CDCSP Level of Care Evaluation completed on February 16, 2015, which indicates that the Appellant has a diagnosis of cerebral palsy and seizures. The document states that the Appellant is ambulatory, but has an abnormal gait that results in falls.

Ms. [REDACTED] also reviewed Exhibit D-3, a Psychological Evaluation completed on February 3, 2015, which indicates that the Appellant is able drink from a sippy cup, although she often chokes. She feeds herself with her fingers and is practicing using utensils. The Appellant is potty-trained, is cooperative with bathing and brushing her teeth, and assists in dressing by putting her arms through sleeves and pulling up her pants. The Appellant's language is delayed in comparison with her peers, but her mother reported significant improvements in the two-week period prior to the evaluation, indicating that the child had begun to use two-word phrases. Although her speech is reportedly difficult to understand, the Appellant imitates inflection well and uses direct action gestures (pointing, reaching or pulling) to communicate her needs. The evaluator indicated that the Appellant's receptive language appeared to be better developed than her expressive skills. At age two (2), the Appellant can identify some colors and body parts, but cannot identify shapes, letters, numbers, or count. The report states that the Appellant can walk independently and has effective use of all extremities, although she exhibits right-side weakness. The child exhibits preferences for certain foods, toys and people, and displays appropriate physical affection toward her mother. She can play with a toy independently for a few minutes without demanding attention, explores unfamiliar situations, and participates in interactive and parallel play. The Appellant recognizes her own home, and requires parental oversight with activities of daily living. The Appellant received a program-eligible score of less than 50 on the physical component of the Developmental Profile 3 (DP-3) screening/diagnostic tool, but received ineligible scores (scores over 55) in the adaptive behavior, social-emotional, cognitive and communication components of the instrument. No test of intellectual ability was administered due to the

Appellant's young age. Ms. [REDACTED] testified that the Appellant received no program-eligible scores (scores of 1 and 2) on any domain of the Adaptive Behavior Assessment System-Second Edition (ABAS-II), which measures communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction and social areas.

While the Appellant received below average scores on the Early Intervention Speech-Language and Developmental Feeding Re-Evaluation, her scores on the Receptive-Expressive Emergent Language Test, Third Edition (REEL-3) were ineligible scores for the CDCSP. Ms. [REDACTED] testified that scores of 55 and below (less than one percentile) are eligible scores for the program. The Appellant received a receptive language ability score of 79, an expressive language ability score of 83, and an overall score of 77.

- 3) The Appellant's mother, [REDACTED], questioned why the Appellant did not meet program requirements in mobility and self-care, and questioned information in the ABAS-II scores. She addressed some of the Appellant's areas of deficiency.

APPLICABLE POLICY

West Virginia Medicaid Regulations Chapter 526 (D-1), Medical Eligibility for ICF/MR Level of Care, includes the following pertinent medical eligibility criteria:

526.6 MEDICAL ELIGIBILITY FOR ICF/MR LEVEL OF CARE

In order to be eligible to receive ICF/MR Level of Care, an applicant must meet the following medical eligibility criteria:

526.6.1 Diagnostic

- Have a diagnosis of mental retardation and/or a related condition.
 - Require the level of care and services provided in an ICF/MR (Intermediate Care Facility for the Mentally Retarded) as evidenced by required evaluations and corroborated by narrative descriptions of functioning and reported history. An ICF/MR provides services in an institutional setting for persons with mental retardation or related condition. An ICF/MR facility provides monitoring, supervision, training, and supports.
- Level of care (medical eligibility) is based on the Annual Medical Evaluation (DD-2A/CDCSP), the Psychological Evaluation (DD-3/CDCSP) and verification if not indicated in the DD-2B/CDCSP and DD-3/CDCSP, that documents that the mental retardation and/or related conditions with associated concurrent adaptive deficits, are severe, and are likely to continue indefinitely. Other documents, if applicable

and available, that can be utilized include the Social History, IEP for school age children and Birth to Three assessments.

The evaluations must demonstrate that an applicant has a diagnosis of mental retardation and/or a related developmental condition, which constitutes a severe and chronic disability. For this program individuals must meet the diagnostic criteria for medical eligibility not only by relevant test scores, but also be supported by the narrative descriptions contained in the documentation.

- Must have a diagnosis of mental retardation, with concurrent substantial deficits (substantial limitations associated with the presence of mental retardation), and/or
- Must have a related developmental condition which constitutes a severe and chronic disability with concurrent substantial deficits. Examples of related conditions which, if severe and chronic in nature, may make an individual eligible for the CDCSP (ICF/MR Level of Care) include, but are not limited to, the following:
 - Autism
 - Traumatic brain injury
 - Cerebral Palsy
 - Spina Bifida
 - Tuberous Sclerosis
- Any condition, other than mental illness, found to be closely related to mental retardation that results in an impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires services similar to those required for persons with mental retardation. Additionally, mental retardation and/or related conditions with associated concurrent adaptive deficits that are likely to continue indefinitely.
- Must result in the presence of a least three (3) substantial deficits as that term is defined in Title 42, Chapter IV, Part 435.1010 of the Code of Federal Regulations (CFR). Substantial deficits associated with a diagnosis other than mental retardation or a related condition do not meet eligibility criteria. Additionally, any individual needing only personal care services does not meet the eligibility criteria for ICF/MR level of care.

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 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.

526.6.3 Active Treatment

The applicant would benefit from continuous active treatment typically provided by a facility whose primary purpose is to furnish health and habilitation services to persons with mental retardation or related conditions.

DISCUSSION

In order to establish medical eligibility for participation in the CDCSP Medicaid Program, an individual must meet the diagnostic and functionality criteria. The applicant must have a diagnosis of mental retardation or a related condition with concurrent substantial deficits, which constitutes a severe and chronic disability. While the Appellant has a potentially-eligible

diagnosis for the CDCSP, clinical documentation provided for review does not support the presence of substantial deficits in three (3) of the six (6) major life areas. Therefore, medical eligibility for the CDCSP has not been established.

CONCLUSIONS OF LAW

Evidence submitted at the hearing demonstrates that the Appellant does not meet the medical eligibility criteria required for participation in the CDCSP Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's benefits through the CDCSP.

ENTERED this 15th Day of July 2015.

Pamela L. Hinzman
State Hearing Officer