



**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**

November 20, 2015



RE: ██████████ v. WVDHHR  
ACTION NO.: 15-BOR-3006

Dear Ms. ██████████

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,

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

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 15-BOR-3006**

**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 November 12, 2015, on an appeal filed September 3, 2015.

The matter before the Hearing Officer arises from the July 23, 2015 decision by the Respondent to deny the Appellant's request for services under the Children With Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by ██████████, Long-Term Care Clinical Consultant. ██████████; ██████████, RN, Nurse Reviewer, ██████████; and ██████████, CDCSP Program Coordinator, ██████████. The Appellant was represented by her mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual Chapter 526.4
- D-2 CDCSP Medical Evaluation dated April 26, 2015
- D-3 Cost Estimate Worksheet Instructions
- D-4 Information from ██████████ dated June 9, 2014
- D-5 Letter from Social Security Administration dated August 18, 2014

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 July 23, 2015, the Appellant was notified that her application for the Children With Disabilities Community Services Program (CDCSP) was denied because her condition does not meet the criteria for an Acute Care Hospital level of care.
- 2) The Department's witnesses reviewed policy (D-1) and medical documentation provided in conjunction with the CDCSP application (D-2 and D-3). Exhibit D-2 indicates that the Appellant's primary diagnosis is a diffuse venous malformation over her right leg/foot/pelvis with coagulopathy and painful phleboliths. It further indicates that the Appellant's gait is "ok," but she requires a wheelchair when walking for any distance, and that the Appellant requires crutches after medical procedures for two to four weeks. She experiences periods of pain and swelling, during which time she needs to be immobile and have rest and elevation. The document states that the Appellant's condition is stable, but she will require rehabilitative care and intense nursing care when she is hospitalized for procedures, infections or clots. The Appellant's normal day-to-day care is managed in a setting that is less than an acute care setting.
- 3) The Appellant's mother, [REDACTED], testified that her daughter must wear compression garments that cost \$442 a piece, and is taking a new medication that costs more than \$878. The Appellant undergoes periodic sclerotherapy, and Ms. [REDACTED] administers the Appellant's Lovenox injections.

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual Chapter 526.4.1 states that Acute Care Hospital level of care is appropriate for a child who requires the type of care ordinarily provided in a hospital, and who, without these services, would require frequent, continuous, or prolonged hospitalizations. This level of care is highly skilled, provided by professionals, and is not normally available in a skilled nursing facility, but available only in an inpatient Acute Care Hospital setting. This level of care is appropriate when a child requires, throughout the day, an extensive array of services furnished either directly by, or under the direct supervision of, a physician. This daily skilled medical treatment is more complex than nursing facility level of care due to an unstable medical condition.

Chapter 526.4.2 of the Manual states that a child meets an Acute Care Hospital level of care when:

1. Skilled assessment and intervention multiple times during a 24-hour period, on a daily basis, is required to maintain stability and prevent deterioration including: medical monitoring, assessment, and intensive medication administration for the medical condition; monitoring changes in the child's condition that require prompt interventions to avert complications; provision of physician-supervised, hands-on, comprehensive medical interventions and treatments; modifications of treatment plans throughout the day based on the child's condition; the child requires comprehensive medical treatments and skilled services on a daily basis; AND
2. As a practical matter, the daily comprehensive medical services can be provided only on an inpatient basis in an acute care hospital setting; AND
3. The child requires acute care services that must be performed by, or under the supervision of, professional or technical personnel and directed by a physician that includes a treatment plan; AND
4. The treatment of the child's illness substantially interferes with the ability to engage in everyday age-appropriate activities of daily living at home and in the community, including but not limited to bathing, dressing, toileting, feeding, and walking/mobility; AND
5. The child's daily routine is substantially altered by the need to complete these specialized, complex and time consuming treatments and medical interventions or self-care activities; AND
6. The child requires specialized professional training and monitoring beyond those ordinarily expected of parents; AND
7. The child's condition meets criteria for an inpatient level of care. Acute Care Hospital level of care must be furnished pursuant to a physician's orders and be reasonable and necessary for the treatment of an individual's illness or injury and must be consistent with the nature and severity of the child's illness or injury, his/her particular medical needs and accepted standards of medical practice.

### **DISCUSSION**

Evidence submitted at the hearing reveals that an Acute Care Hospital level of care under the CDCSP is appropriate for a child who requires the type of care ordinarily provided in a hospital, and who, without these services, would require frequent, continuous, or prolonged hospitalizations. This level of care is highly skilled, provided by professionals, and is not normally available in a skilled nursing facility, but available only in an inpatient Acute Care Hospital setting. This level of care is appropriate when a child requires, throughout the day, an extensive array of services furnished either directly by, or under the direct supervision of, a

physician. This daily skilled medical treatment is more complex than nursing facility level of care due to an unstable medical condition.

Documentation and testimony provided during the hearing reveal that the Appellant's medical care can be managed day to day outside of an Acute Care Hospital, and the Appellant only requires an extensive level of care for acute events such as cellulitis, clots, or procedures needed in conjunction with her venous malformation. Therefore, regulatory requirements for an Acute Care Hospital level of care have not been met.

### **CONCLUSIONS OF LAW**

Evidence submitted at the hearing affirms the Department's decision to deny the Appellant's application for benefits under 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 application for services under the CDCSP.

**ENTERED this 20th Day of November 2015.**

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**Pamela L. Hinzman**  
**State Hearing Officer**