



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 7, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3411

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3411

**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 January 6, 2016, on an appeal filed November 9, 2015.

The matter before the Hearing Officer arises from the October 23, 2015 decision by the Respondent to deny the Appellant's application for benefits through the Children with Disabilities Community Services (CDCSP) Medicaid Program.

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

Department's Exhibits:

- D Denial notice dated October 23, 2015
- D-1 West Virginia Medicaid Regulations Chapter 526, Sections 526.5
- D-2 Supplemental Security Income (SSI) Notice of Disapproved Claim dated June 5, 2015
- D-3 CDCSP Level of Care Evaluation dated June 11, 2015
- D-5 Psychological Evaluation dated August 7, 2015

*Exhibit D-4 was not submitted into evidence

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 October 23, 2015, Appellant was notified (Exhibit D) that her application for Medicaid benefits through the Children with Disabilities Community Services Program (CDCSP) was denied. This notice indicates that the documentation submitted for review does not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas. Substantial adaptive deficits were identified in Appellant's receptive or expressive language and mobility; however, deficits could not be identified in any of the other four (4) major life areas (learning, self-care, self-direction or capacity for independent living).
- 2) As a matter of record, Respondent acknowledged that the Appellant has a potentially eligible diagnosis (Aicardi Syndrome), but indicated that the clinical documentation submitted for review fails to demonstrate substantial adaptive deficits in at least three (3) of the six (6) major life areas.
- 3) Substantial deficits are defined as standardized scores of three (3) standard deviations below the mean or less than (1) one percentile when derived from a normative sample that represents the general population. Respondent stipulated that the evidence supports a finding that the Appellant is demonstrating substantial adaptive deficits in the major life areas of receptive or expressive language and mobility, however, no other deficits were identified in the Psychological Evaluation (Exhibit D-5) conducted in August 2015. Respondent noted that the Vineland Adaptive Behavior Scales–II, hereinafter Vineland, assessment tool used to evaluate the Appellant does not assess self-direction, self-care or capacity for independent living - and learning could not be assessed due to the Appellant being seven (7) months old at the time of the evaluation. In the absence of relevant test scores that identify three (3) substantial adaptive deficits, medical eligibility cannot be established.
- 4) Appellant contended that three (3) of the four (4) areas assessed by the Vineland demonstrate qualifying adaptive behavior scale scores (communication, socialization and motor skills – all of which are three (3) standard deviations below the mean). However, the scores in communication and motor skills are the only assessed areas that can be used to establish substantial adaptive deficit (receptive and expressive language and mobility were awarded) – social skills are only one (1) of three (3) components required to identify a substantial adaptive deficit in the area of capacity for independent living.

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:

526.5.1 Medical Eligibility for ICF/IID Level of Care

To be medically eligible, the child must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested and corroborated by narrative descriptions of functioning and reported history. Evaluations of the child must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; AND
- A need for the same level of care and services provided in an ICF/IID.

The child must meet the medical eligibility criteria in this section and in each of the following sections 526.5.2, *and its subparts* in order to be eligible for this program. If the child is under the age of 19 and has been determined medically eligible for the Home and Community Based Intellectual/ Developmental Disabilities Waiver (IDDW) program and is on the wait list, then initial medical eligibility has been established and will be accepted for the CDCSP for one year. A new CDCSP-3 (Psychological Evaluation) must be submitted for redetermination of medical eligibility annually thereafter.

526.5.2 Medical Necessity for ICF/IID Level of Care

Medical Necessity for ICF/IID level of care is determined by the evaluation of the child's diagnosis, functionality and need for active treatment as defined in *this Section and its subparts*.

526.5.2.1 Diagnosis for ICF/IID Level of Care

Have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age 19 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 19. Examples of related conditions which may, if severe and chronic in nature, may make a child eligible for this program include but are not limited to the following:

- Autism;
- Traumatic Brain Injury;
- Cerebral Palsy;
- Spina Bifida; and
- Any condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability, and requires services similar to those required for persons with intellectual disabilities. Additionally, intellectual disability and/or related conditions with associated concurrent adaptive deficits are likely to continue indefinitely.

- Level of care (medical eligibility) is based on the Annual Medical Evaluation (CDCSP-2A), the Psychological Evaluation (CDCSP-3) and verification, if not indicated in the CDCSP-2A and CDCSP-3, and documents that the intellectual disability 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 Individualized Education Program (IEP) for a school age child and Birth to Three assessments.

526.5.2.2 Functionality for ICF/IID Level of Care

The child must have the substantial deficits in three (3) of the six major life areas as listed below and defined in the 42 CFR §435.1010 of the CFR. Substantial deficits associated with a diagnosis other than intellectual disability or a related condition do not meet eligibility criteria. Additionally, any child needing only personal care services does not meet the eligibility criteria for ICF/IID level of care.

1. **Self-care** refers to such basic activities such as age appropriate grooming, dressing, toileting, feeding, bathing, and simple meal preparation.
2. **Understanding and use of language** (communication) refers to the age appropriate ability to communicate by any means whether verbal, nonverbal/gestures, or with assistive devices.
3. **Learning** (age appropriate functional academics).
4. **Mobility** refers to the age appropriate ability to move one's person from one place to another with or without mechanical aids.
5. **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.
6. **Capacity for independent living** refers to the following 6 sub-domains:
 - home living,
 - social skills,
 - employment,
 - health and safety,
 - community use,
 - leisure activities.

At a minimum, 3 of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three (3) standard deviations below the mean or less than (1) one percentile when derived from a normative sample that represents the general population of the United States or the average range or equal to or below the seventy-fifth (75) percentile when derived from MR normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. 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.).

526.5.2.3 Active Treatment for ICF/IID Level of Care

The child/legal representative submits documentation that supports that the child would benefit from continuous active treatment typically provided by a facility whose primary purpose is to furnish health and habilitation services to persons with intellectual disability or related conditions (i.e. ICF/IID). Active treatment includes aggressive and consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little or no supervision or in the absence of a continuous active treatment program.

DISCUSSION

In order to establish medical eligibility for participation in the Medicaid CDCSP, an individual must meet the diagnostic and functionality criteria. The applicant must have a diagnosis of intellectual disability, or a related condition, with concurrent substantial deficits which constitute a severe and chronic disability. While the Appellant has been diagnosed with a related condition, the clinical documentation provided for review fails to demonstrate 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 fails to demonstrate that the Appellant meets the medical eligibility criteria required for participation in the CDCSP.

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 ____ Day of January 2016.

**Thomas E. Arnett
State Hearing Officer**