



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

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

May 24, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-1461

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,

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

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

cc: [REDACTED], [REDACTED]

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

██████████,

**Appellant,**

**v.**

**Action Number: 17-BOR-1461**

**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 17, 2017, on an appeal filed March 16, 2017.

The matter before the Hearing Officer arises from the February 24, 2017 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 ██████████, RN, Nurse Reviewer, ██████████. The Appellant was represented by his 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
- D-2 CDCSP-2A Level of Care Evaluation dated January 11, 2017
- D-3 CDCSP-2B Level of Care Evaluation dated January 11, 2017

**Appellant's Exhibits:**

- A-1 Additional medical documentation

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 February 24, 2017, the Appellant was notified that his application for the Children with Disabilities Community Services Program (CDCSP) was denied because his daily medical services are provided by a parent, and the Respondent's reviewer identified no complex treatment/medication/services that require acute care services. In addition, there was no documentation indicating a need for continuous medical monitoring.
- 2) Exhibit D-2 indicates that the Appellant – age 11 months at the time of the CDCSP evaluation - was born with an imperforate anus, Vacterl Association, vertebral anomalies, a heart defect, hypospadias, an undescended testicle, a tethered spinal cord, and a recto-urethral fistula.
- 3) Exhibit D-2 states that the Appellant had colostomy placement surgery in February 2016 and will have upcoming surgeries within the next year.
- 4) Exhibit D-3 states that the Appellant requires colostomy care and may require future hospitalizations.
- 5) The Appellant's mother, [REDACTED], testified that her son underwent surgery on April 28, 2017, for the creation of an anal canal, that he was recently hospitalized for a severe urinary tract infection, and that his medical care needs change daily. She indicated that she currently attends to his daily care needs.
- 6) The hearing record remained open to allow the Respondent's representative to review Exhibit A-1, additional medical documentation provided on behalf of the Appellant. The Respondent notified the Appellant and the Hearing Officer on May 22, 2017 that the additional documentation did not change the Respondent's original determination of ineligibility.

### **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 is 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.

Information provided during the hearing reveals that the Appellant's daily medical care needs are currently managed by a parent.

### **CONCLUSION 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 24<sup>th</sup> Day of May 2017.**

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