



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL**

**Jim Justice  
Governor**

**BOARD OF REVIEW  
416 Adams St.  
Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Bill J. Crouch  
Cabinet Secretary**

September 5, 2017

[REDACTED]

RE: [REDACTED], A MINOR v. WVDHHR  
ACTION NO.: 17-BOR-2182

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision  
Form IG-BR-29  
cc: Sarah Clendenin

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

██████, A MINOR,

**Appellant,**

v.

**ACTION NO.: 17-BOR-2182**

**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 ██████, a minor. 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 August 30, 2017, on an appeal filed July 27, 2017.

The matter before the Hearing Officer arises from the June 30, 2017 decision by the Department to deny the Appellant's application for benefits through the Medicaid Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by ██████████, psychologist with Psychological Consultation and Assessment (PC&A). The Appellant appeared *pro se* by her mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1 Notice of Denial, dated June 30, 2017
- D-2 Bureau for Medical Services Provider Manual, Chapter 526: Children with Disabilities Community Services Program
- D-3 CDCSP Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation, signed December 20, 2016
- D-4 Psychological Evaluation, dated March 21, 2017
- D-5 WHOLE Families Diagnostic Evaluation and Recommendations, dated March 29, 2017

**Appellant's Exhibits:**

None

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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant applied for CDCSP services.
- 2) The Appellant's application was based on an ICF/IID level of care. (Exhibit D-1)
- 3) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to CDCSP, including eligibility determination.
- 4) [REDACTED], a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 5) On June 30, 2017, PC&A issued a notice denying the Appellant's application for CDCSP. (Exhibit D-1)
- 6) The Appellant was denied on the basis that documentation failed to demonstrate the Appellant had substantial limitations in *Learning, Self-Direction, Receptive or Expressive Language, and Capacity for Independent Living*. (Exhibit D-1)
- 7) The Appellant was awarded deficits in the areas of *Self-Care*, and *Mobility*. (Exhibit D-1)
- 8) The Appellant meets the CDCSP medical criteria with qualifying diagnoses of Seizure Disorder and Hypotonia. (Exhibit D-3)
- 9) On March 21, 2017, Dr. [REDACTED] a Licensed Clinical Psychologist, completed a psychological evaluation on the Appellant. (Exhibit D-4)
- 10) Dr. [REDACTED] administered an Adaptive Behavior Assessment System (ABAS) instrument. (Exhibit D-5)
- 11) ABAS results are derived from a parent questionnaire with over 240 items concerning daily living skills and adaptive behaviors. (Exhibit D-5)

- 12) Scaled scores of three (3) or less indicate “extremely low” functioning in an adaptive skill area. (Exhibit D-5)
- 13) The Appellant scored below 3 in *Self-Care* and *Motor Skills*. Scores for other adaptive skills ranged from 4 to 10. (Exhibit D-5)
- 14) ABAS scores did not indicate that the Appellant had functioning deficits at three standard deviations below the mean of a normative sample of same-aged peers. (Exhibit D-5)
- 15) PC&A relies on the psychological evaluation ABAS scores to determine functionality eligibility.
- 16) Narrative in the Psychological Evaluation was consistent with the ABAS results regarding the Appellant’s mobility and adaptive functioning. (Exhibits D-4 and D-5)

### **APPLICABLE POLICY**

#### **Children with Disabilities Community Services Program (CDCSP) §526.5.1 Medical Eligibility for ICF/IID Level of Care provides that:**

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:

- 1) 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
- 2) A need for the same level of care and services provided in an ICF/IID

The child must meet the medically eligibility criteria in this section and in each of the following sections 526.5.2 and its subparts

#### **CDCSP §526.5.2.2 Functionality for ICF/IID Level of Care:**

The child must have substantial deficits in three (3) of the six major life areas...

- 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 [emphasis added] 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 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.)

## **DISCUSSION**

An application was submitted on behalf of the Appellant for CDCSP services. On June 30, 2017, PC&A issued a notice denying the Appellant's application for CDCSP on the basis that the Appellant failed to demonstrate substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for ICF/IID eligibility. The Appellant was awarded substantial limitation in the areas of *Mobility* and *Self-Care*. The Appellant representative contends that the Appellant has a 40% delay in *Language* and *Self-Direction* and should be awarded substantial limitations in those functioning areas.

The Respondent had to prove by a preponderance of evidence that the Appellant did not establish medical eligibility in her application for CDCSP. The CDCSP application for the Appellant proposed an ICF/IID level of care. There are two components required to establish medical necessity for this level of care: the diagnostic component and the functionality component. The Appellant's qualifying diagnosis was not contested by the Respondent. PC&A relies on the psychological evaluation ABAS scores to determine functionality eligibility. On March 21, 2017, an ABAS-3 Parent instrument was used to assess the Appellant's adaptive behaviors; the Appellant's mother was the rater. The Appellant scored "extremely low" in the areas of *Self-Care* and *Mobility*. The Appellant scored "low" to "average" in all other adaptive skill areas. Although the ABAS indicate that the Appellant does demonstrate delay in other functioning areas, the delays

in these areas are not significant enough to meet the policy requirement of delays three (3) standard deviations below the mean when compared to a normative sample of same-aged peers. The Appellant's representative did not present any testimony or evidence to indicate that the Appellant should be awarded functionality deficits in additional areas.

The Appellant's representative was unable to demonstrate that the Appellant should be awarded additional substantial adaptive deficits. Evidence presented by the Respondent proves by a preponderance of evidence that the Appellant did not establish medical eligibility in her application for CDCSP. The Respondent was correct in denying the Appellant's application for CDCSP.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, the Appellant must have three (3) of six (6) substantial adaptive deficits to be eligible for CDCSP.
- 2) The Appellant demonstrated substantial deficits in *Self-Care* and *Mobility*.
- 3) Because the Appellant did not meet the functionality component, medical eligibility could not be established.
- 4) The Respondent was correct in denying the Appellant's application for CDCSP.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Department's denial of the Appellant's application for CDCSP services.

ENTERED this 5th day of September 2017.

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**Tara B. Thompson**  
State Hearing Officer