



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

November 13, 2018

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR
ACTION NO.:18-BOR-2408

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services; Psychological Consultation and Assessment

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

■, A JUVENILE,

Appellant,

v.

Action Number: 18-BOR-2408

**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 juvenile. 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 1, 2018.

The matter before the Hearing Officer arises from the August 30, 2018, decision by the Respondent to deny medical eligibility for services under the Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his mother, ■. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated August 30, 2018
- D-2 Bureau for Medical Services Provider Manual Chapter 526
- D-3 Level of Care Evaluation (CDCSP-2A) dated June 20, 2018
- D-4 Comprehensive Psychological Evaluation (DD-3) dated June 22, 2018
- D-5 Individual Education Plan dated June 6, 2018

Appellant's Exhibits:

- A-1 Occupational Therapy Evaluation dated May 30, 2018
- A-2 Physical Therapy Evaluation dated October 24, 2018

- A-3 Speech and Language Evaluation dated May 3, 2018
- A-4 Score Summary Report for Battelle Developmental Inventory dated April 13, 2018
- A-5 Comprehensive Psychological Evaluation (DD-3) dated June 22, 2018

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) The Appellant was evaluated for CDCSP services under the ICF/IID Level of Care criteria.
- 2) The Respondent notified the Appellant on August 30, 2018 that his application for CDCSP services had been denied as he did not have an eligible diagnosis and was not demonstrating at least three (3) substantial adaptive deficits in the six (6) major life areas identified for program eligibility (Exhibit D-1).
- 3) The Appellant was diagnosed with Down's Syndrome and Global Developmental Delay (Exhibits D-3 and D-4).
- 4) The Appellant was not found to be demonstrating any substantial adaptive deficits in the six major life areas (Exhibit D-4).

APPLICABLE POLICY

Bureau for Medical Services Manual §§526.2.1 and 526.5.2 states that medical eligibility for CDCSP services is comprised of two components:

1. The applicant must meet the level of care stated in the application for one of the three following medical facilities:

- Nursing Facility; OR
- ICF/IID; OR
- Acute Care Hospital; AND

2. The cost of medical care the applicant incurred in the 12 months prior to application are less than the costs that would have been incurred in the medical facility level of care (Nursing Facility, ICF/IID, or Acute Care Hospital) during the same period.

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.

Diagnostic Criteria

The applicant must 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.

Functionality Criteria

The child must have 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.

- **Self-care** refers to such basic activities such as age appropriate grooming, dressing, toileting, feeding, bathing, and simple meal preparation.
- **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.
- **Learning** (age appropriate functional academics).
- **Mobility** 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** 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.).

DISCUSSION

Pursuant to policy, an applicant for CDCSP services must have a diagnosis of intellectual disability or a related condition which constitutes a severe and chronic disability, with concurrent substantial deficits in at least three of the six major life areas that manifested prior to age 19.

The Respondent's witness, Linda Workman, testified that the Appellant had diagnoses of Down's Syndrome and Global Developmental Delay, neither of which meet the diagnostic criteria of an intellectual disability or related condition. Furthermore, Ms. Workman stated that based on the test scores submitted with the Appellant's application, he was not demonstrating substantial deficits in any of the six major life areas.

According to the Vineland Adaptive Behavior Scale administered to the Appellant during a psychological evaluation in June 2018, the Appellant had scores of 74 in communication (language), 71 in daily living (self-care), 72 in social (capacity for independent living) and 62 in motor skills (mobility). Policy defines a substantial adaptive deficit as a standardized score of less than one percentile or three standard deviations below the mean. The mean, or average, for the Vineland is a score of 100. An eligible test score of less than one percentile or three standard deviations below the mean is 61 or below. The Appellant did not have any eligible test scores from the Vineland Adaptive Behavior Scale.

Ms. Workman noted that there were no test scores submitted for the Appellant that measured his intellectual functioning to establish a deficit in learning, self-direction, or the sub-domains of capacity for independent living.

Based on the documentation submitted, the Appellant does not have an eligible diagnosis of intellectual disability or a related condition to meet the diagnostic criteria, and does not meet the functionality criteria by demonstrating at least three substantial deficits in the six major life areas.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic and functionality criteria must be met to establish medical eligibility services under CDCSP.
- 2) The Appellant does not have a diagnosis of intellectual disability or related condition that impairs his intellectual functioning.
- 3) Policy requires that for the functionality criteria to be met, the applicant must demonstrate at least three (3) substantial deficits of the six (6) major life areas as determined by standardized test scores.
- 4) The Appellant did not have any eligible test scores for the major life areas that were evaluated.
- 5) The Appellant did not meet the diagnostic or functionality criteria required to meet medical eligibility for CDCSP services.

DECISION

It is the decision of the State Hearing Officer to uphold the decision of the Respondent to deny the Appellant's application for services under the Children with Disabilities Community Services Program.

ENTERED this 13th day of November 2018

Kristi Logan
State Hearing Officer