



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

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Cabinet Secretary**

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**Jolynn Marra  
Interim Inspector General**

July 31, 2019

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR  
ACTION NO.: 19-BOR-1706

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Sarah Clendenin, PC&A

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

█, A JUVENILE,

**Appellant,**

v.

**Action Number: 19-BOR-1706**

**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 June 6, 2019, on an appeal filed May 9, 2019.

The matter before the Hearing Officer arises from the May 1, 2019 decision by the Respondent to deny the Appellant's renewal application for the Children with Disabilities Community Services Program (CDCSP) based on an unfavorable medical eligibility finding.

At the hearing, the Respondent appeared by Linda Workman. The Appellant appeared *pro se*, by his mother and guardian █. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of denial, dated May 1, 2019
- 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, dated April 12, 2019
- D-4 Psychological Evaluation of the Appellant, dated April 8, 2019 (evaluation date)

**Appellant's Exhibits:**

- A-1 Individualized Education Program (IEP), █ County Schools, dated March 21, 2019 (meeting date)

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 a recipient of CDCSP services.
- 2) The Appellant submitted a renewal application for CDCSP on April 12, 2019, under the ICF/IID Level of Care designation. (Exhibit D-3)
- 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) Linda Workman, a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 5) The Respondent issued a notice dated May 1, 2019 (Exhibit D-1) denying the Appellant's CDCSP renewal application. This notice provides the denial reason as "Documentation submitted for review does not support the presence of an eligible diagnosis for ICF/IID level of care of intellectual disability or a related condition which is severe. The psychological evaluation does not support a severe level of autism and it is noted that there is significant disparity between the ratings for adaptive behavior and symptoms of autism between the parent and those of the teachers."
- 6) The Appellant is diagnosed with autism. (Exhibit D-3)
- 7) Ms. Workman testified that the psychological evaluation of the Appellant (Exhibit D-4) described (under the heading "Classroom Observation") behavior by the Appellant that was not indicative of severe autism, including: cooperative play, imaginative play, social skills, the ability to follow directions, and verbal ability.
- 8) The April 8, 2019 psychological evaluation (Exhibit D-4) of the Appellant noted that the Bracken Basic Concept Scale – Third Edition (BBCS-3) was administered and the Appellant received a scaled score "within the Average range" on the School Readiness Composite (SRC) subtests, which "...can be used to assess children's knowledge of those 'readiness' concepts that parents, preschool and kindergarten teachers traditionally teach children in preparation for formal education (Colors, Letters, Numbers/Counting, Sizes/Comparisons, and Shapes)."
- 9) The April 8, 2019 psychological evaluation (Exhibit D-4) of the Appellant noted that the Adaptive Behavior Assessment System – Third Edition (ABAS-3) was completed by the

Appellant's preschool teacher, resulting in no scaled scores in a range indicative of substantial deficits in any of the assessed areas. An ABAS-3 was also completed with the Appellant's parent, which also resulted in no scaled scores indicating substantial deficits.

- 10) As part of the Appellant's April 2019 psychological evaluation (Exhibit D-4), an Autism Spectrum Rating Scale (ASRS) was administered (based on ratings from three raters: the Appellant's classroom teacher, his "preschool itinerant teacher" and his mother) and the Appellant did not receive scores indicative of severe autism by any rater, on any of the scales used.
- 11) On January 22, 2019, the Appellant was administered the Batelle Developmental Inventory – Second Edition, and the results were included in the Individualized Education Program (IEP) report (Exhibit A-1) of the Appellant, and he obtained standard scores in the Adaptive subtest of the instrument that were not indicative of substantial deficits.

### **APPLICABLE POLICY**

Bureau for Medical Services Policy Manual §526.1 defines the CDCSP ICF/IID level of care as follows:

**Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID):** active treatment for individuals with intellectual disabilities and/or related conditions (e.g. cerebral palsy, autism, traumatic brain injury) who require the type of active treatment typically provided by a facility whose primary purpose is to furnish health and habilitation services to persons with intellectual disabilities or related conditions.

Bureau for Medical Services Policy Manual §526.5 states to be eligible for CDCSP under the ICF/IID level of care, the child 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.

Bureau for Medical Services Policy Manual §526.5.2.2 states:

#### **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:
  - o home living,
  - o social skills,
  - o employment,
  - o health and safety,
  - o community use,
  - o 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**

The Respondent denied the Appellant's renewal application for CDCSP services based on an unfavorable medical eligibility finding. The Respondent must prove by preponderance of the evidence that the Appellant did not establish medical eligibility in his application for services.

The CDCSP application for the Appellant proposed an ICF/IID level of care. Policy requires several conditions to be met in order to establish medical eligibility for this level of care, and the absence of any of these conditions is disqualifying. The Appellant has a diagnosis of autism, which is potentially eligible if the diagnosis is "severe and chronic in nature." CDCSP policy also requires the functionality of the applicant to demonstrate severity through both narrative descriptions and standardized scores from testing instruments that measure adaptive behavior. Although the Appellant's mother convincingly testified regarding the Appellant's limitations, this testimony and other narrative descriptions must be supported by test scores that demonstrate the degree of severity required by CDCSP policy. None of the test scores on any instrument, by any rater, supported the substantial deficits required to meet the functionality component of medical eligibility for CDCSP under an ICF/IID level of care, or the severity designation necessary to meet the diagnostic component of CDCSP medical eligibility.

Because the Appellant did not meet these requirements for an ICF/IID level of care, medical necessity for CDCSP was not established and the Respondent was correct to deny the Appellant's CDCSP renewal application on this basis.

## **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not meet the necessary diagnostic or functionality components, the Appellant did not establish the need for an ICF/IID level of care.
- 2) Because the Appellant did not meet the ICF/IID level of care, medical eligibility for CDCSP was not established and the Respondent was correct to deny the Appellant's renewal application for CDCSP on this basis.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Appellant's renewal application for CDCSP services.

**ENTERED this \_\_\_\_ Day of July 2019.**

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**Todd Thornton  
State Hearing Officer**