



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

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**Jolynn Marra  
Interim Inspector General**

October 8, 2019



RE: [REDACTED], A JUVENILE v. WV DHHR  
ACTION NO.: 19-BOR-2009

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-2009**

**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 August 1, 2019, on an appeal filed July 10, 2019.

The matter before the Hearing Officer arises from the May 14, 2019 decision by the Respondent to deny the Appellant's application for the Children with Disabilities Community Services Program (CDCSP) based on an unfavorable medical eligibility finding.

At the hearing, the Respondent appeared by Kerri Linton. 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 | Bureau for Medical Services Provider Manual, Chapter 526: Children with Disabilities Community Services Program                         |
| D-2 | CDCSP Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation, dated March 1, 2019 |
| D-3 | WV Birth to Three Evaluation/Assessment Summary Report, dated March 19, 2019  |
| D-4 | Social History, dated April 8, 2019   |

- D-5 WV Birth to Three Individualized Family Service Plan, dated January 3, 2019
- D-6 WV Birth to Three Evaluation/Assessment Summary Report, dated September 20, 2018
- D-7 WV Birth to Three Evaluation/Assessment Summary Report, dated December 20, 2018
- D-8 WV Birth to Three Evaluation/Assessment Summary Report, dated January 11, 2019
- D-9 Notice of denial, dated May 14, 2019

**Appellant's Exhibits:**

- A-1 Letter from [REDACTED], dated July 1, 2019
- A-2 WV Birth to Three Individualized Family Service Plan review, dated June 25, 2019

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 applied for CDCSP on March 1, 2019, under the ICF/IID Level of Care designation. (Exhibit D-2)
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to CDCSP, including eligibility determination.
- 3) Kerri Linton, a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent issued a notice dated May 14, 2019 (Exhibit D-9) denying the Appellant's CDCSP application. This notice provides the denial reason as "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID Eligibility."

- 5) The notice of denial (Exhibit D-9) additionally noted that “the documentation failed to demonstrate substantial limitations” in any of the six major life areas designated by CDCSP policy.
- 6) The Appellant was assessed using the Adaptive Behavior Assessment System – Third Edition (ABAS-3), based on results provided by the Appellant’s mother. (Exhibit D-3)
- 7) The ABAS-3 results for the Appellant did not reflect substantial limitations in any of the adaptive skill areas or their corresponding “major life areas” as defined by CDCSP policy. (Exhibit D-3)
- 8) Ms. Linton testified that the narratives and the medical documentation regarding the Appellant indicated he has delays, but not “substantial deficits” as defined by CDCSP policy. (Exhibits D-2, D-3, D-4, D-5, D-6, D-7, D-8, A-1 and A-2)
- 9) Ms. Linton testified the WV Birth to Three documentation uses measures of developmental delay which were not expressed in the terms required for a determination of “substantial deficits” – i.e., “an appropriate standardized test for measuring adaptive behavior” using standard scores with a mean and standard deviation.

### **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 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. CDCSP policy regarding functionality requires an applicant to have substantial deficits in at least three of the six major life areas. Policy requires both narrative and test scores to support a substantial deficit finding, and specifically outlines the requirements for testing instruments which not only measure adaptive behavior but allow for the measurements to be compared to a mean in terms of the standard deviation when derived from a normative sample.

The only test results for the Appellant that meet these requirements were the ABAS-3 results, which clearly showed the Appellant did not have substantial deficits in any adaptive skill area or corresponding major life area. Narratives regarding the Appellant indicated delays, but not delays which could be quantified as substantial. Documentation from WV Birth to Three could not be considered because it was presented in a format (e.g., Exhibit D-5, page 2, "Developmental Delay" headings: "40% Delay," "25% Delay," and "Atypical Development") which could not be expressed in terms of "standard deviations below the mean" as required by CDCSP policy.

With no test scores to support a substantial deficit in any of the major life areas, the Appellant did not meet the functionality component of medical eligibility for CDCSP and the Respondent was correct to deny the Appellant's CDCSP application on this basis.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not meet the functionality component of CDCSP eligibility, 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 application for CDCSP on this basis.

### **DECISION**

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

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

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**Todd Thornton  
State Hearing Officer**