



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

April 30, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1291

Dear Mr. [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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Board of Review
Angie Diaz, WVDHHR
Nora Dillard, BMS
Lori Tyson, BMS

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1291

**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 April 22, 2020, on an appeal filed February 25, 2020.

The matter before the Hearing Officer arises from the January 16, 2020 decision by the Respondent to deny the Appellant's Children with Disabilities Community Service Program (CDCSP) benefits for the period of July 2019 through November 2019 and to approve medical eligibility effective December 16, 2019.

At the hearing, the Respondent appeared by Ashley Dupree, Economic Service Worker, and Elvie Funk, Economic Services Supervisor, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated January 16, 2020
- D-2 Medicaid application dated January 15, 2020
- D-3 West Virginia Income Maintenance Manual Chapter 24.52
- D-4 Notice of begin date for CDCSP eligibility
- D-5 West Virginia Income Maintenance Manual Chapter 24.50.1.I
- D-6 Notice of begin date for CDCSP eligibility (duplicate)

Appellant's Exhibits:

- A-1 Appellant's medical records

- A-2 Appellant's written history
- A-3 Appellant's current medical bills
- A-4 Appellant's medical bills forwarded to a collection agency

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 born in July 2019 with a medical condition that required lengthy hospitalizations (Exhibit A-2).
- 2) The Appellant's representative inquired about types of Medicaid coverage for which the Appellant could potentially qualify in September 2019.
- 3) The Appellant's representative was informed that household income was excessive for regular Medicaid benefits in September 2019 and no Medicaid application was taken at that time.
- 4) The Appellant was referred to the Children with Disabilities Community Service Program (CDCSP) in September 2019.
- 5) The Appellant applied for Supplemental Security Income (SSI) in November 2019.
- 6) The Social Security Administration denied the Appellant's SSI application in December 2019.
- 7) The Bureau for Medical Services (BMS) determined that the Appellant was medically eligible for CDCSP benefits effective December 16, 2019 (Exhibits D-4 and D-6).
- 8) The [REDACTED] County DHHR Economic Services Unit subsequently evaluated financial eligibility and approved the Appellant's CDCSP benefits effective December 2019 (D-1).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 1.2.1 states:

In addition to addressing all questions and concerns the client may have, the worker must explain the benefits of each program and inform the client of his right to apply for any or all of them.

No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA) or the Bureau for Medical Services (BMS). Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest.

Certain programs, such as Children with Disabilities Community Service Program (CDCSP), Intellectual and Developmental Disabilities (I/DD) Waiver, Aged and Disabled Waiver (ADW) and Traumatic Brain Injury (TBI) Waiver, require a medical and/or other determination by a community agency or government division other than the DFA and a financial determination by an Income Maintenance Worker. When an applicant's medical eligibility for, or enrollment in, such programs is pending, he must not be refused the right to apply, but must be evaluated for any or all Department programs.

Chapter 1.2.1.C of the Manual states:

It is the worker's responsibility to explain and make available all of the Department of Health and Human Resources' (DHHR) programs for which the applicant could qualify. The worker must evaluate potential eligibility for all programs based on the available information, unless the applicant specifically states he is not interested in being considered for a specific program.

When an applicant has been evaluated and eligibility is confirmed, a client notice is issued from the eligibility system to inform the applicant that he may be eligible for a benefit for which he did not apply and that he must contact his local office for information or to apply.

Chapter 1.2.3.A of the Manual states:

The worker has the following general responsibilities in the application process. Program-specific responsibilities are found in the program sections of this chapter.

The worker must:

- Accept an application from any person or his representative who wishes to apply.
- Determine if the applicant requires special assistance.
- Ensure the client is given the opportunity to apply for all of the Department's programs on the date that he expresses interest.

The worker must inform the client of his responsibilities, the process involved in establishing his eligibility, including the Department's processing time limits, and how the beginning date of eligibility is determined.

Chapter 24.49 of the Manual states:

A child is eligible for Medicaid as a CDCSP client when all of the following conditions are met:

- The child has not attained the age of 18.

- The child has been denied Supplemental Security Income (SSI) eligibility or appears to be ineligible for SSI eligibility because the income and assets of his parent(s) were deemed to him, and as a result, the SSI income or asset eligibility test was not met.
- The child's own gross income does not exceed 300% of the SSI payment level.
- The child has been determined to require a level of care provided in a medical institution, nursing home, ICF/IID, hospital, or psychiatric facility.
- The child is expected to receive the necessary services at home or in the community.
- The estimated cost of services is no greater than the estimated cost of institutionalization.
- The child would be eligible for an SSI payment if in a medical institution.

NOTE: The Worker must refer the family to the Social Security Administration (SSA) to apply for SSI if the family has not done so already, even though the worker may be able to determine that the SSA would deny the child as a result of deeming the parents' income and/or assets.

The worker must then obtain a copy of the SSI denial letter and retain it in the case record.

The Bureau for Medical Services (BMS) Long Term Care (LTC) Unit determines medical eligibility and notifies the local office and the case management agency of the decision in writing.

Chapter 24.50.1.F of the Manual states:

The agency must take action to approve, deny, or withdraw the application within 30 days of the date of application.

The worker must give the parent(s) or legal guardian at least 10 days for the information to be returned.

West Virginia Income Maintenance Manual Chapter 24.50.1.I (D-5) states that eligibility for CDCSP is retroactive to the later of these two dates:

- The date of medical need, established by the BMS, and conveyed by memorandum to the CSM; or
- The date all eligibility requirements were met, up to three months prior to the application date.

Chapter 24.50.1.G of the Manual states:

When the Department of Health and Human Resources (DHHR) fails to request necessary verification, the worker must immediately send a verification checklist or form DFA-6 to request

it. He must inform the client that the application is being held pending. When the verification is received, and the client is eligible, medical coverage is retroactive to the time eligibility would have been established had the DHHR acted in a timely manner. Reimbursement for out-of-pocket expenses may apply.

DISCUSSION

Policy states that eligibility for CDCSP benefits is retroactive to either the date of medical need established by the Bureau for Medical Services or the date all eligibility requirements are met, up to three months prior to the application date, whichever is later.

The Appellant's father/representative contended that the Appellant's medical condition has not changed since the date of his birth; therefore, he should be eligible for CDCSP benefits effective July 2019. The Appellant's father testified that he inquired about Medicaid benefits for the Appellant with the [REDACTED] County DHHR Office in September 2019. He stated that he was initially informed that the Appellant would not qualify for regular Medicaid benefits based on excessive household income. The Appellant's father indicated that he was then referred to the CDCSP and started the application process. The Appellant's father indicated that he was not informed that the Appellant was required to apply for SSI benefits as part of the CDCSP application process until October 2019 when a Birth-to-Three worker informed him that an SSI application denial was required to meet medical eligibility requirements. He testified that the Appellant has accumulated substantial medical bills since his birth in July 2019.

The Respondent's representative, Ashley Dupree, testified that the Economic Services Unit approves a CDCSP applicant for benefits based on the medical eligibility date established by the Bureau for Medical Services. The Economic Services Unit determined that the Appellant was financially eligible and approved CDCSP coverage effective December 16, 2019.

No witnesses were present during the hearing to confirm the date that the Appellant began the CDCSP medical eligibility process and no documentation was provided to verify whether the Appellant's representative was informed of the SSI denial requirement.

As the Appellant's representative did not inquire about CDCSP benefits until September 2019 and had not yet applied for SSI benefits at that time, the Appellant did not meet CDCSP medical eligibility requirements in July or August 2019.

CONCLUSIONS OF LAW

- 1) An applicant must meet several requirements before he is determined medically eligible for the CDCSP, including applying for and being denied for SSI benefits. Upon referral to the CDCSP, the Department worker is required to refer the family to the Social Security Administration (SSA) to apply for SSI if the family has not done so already.

- 2) Eligibility for the CDCSP is retroactive to either the date of medical need, established by the Bureau for Medical Services, or the date all eligibility requirements are met, up to three months prior to the application date, whichever is later.
- 3) The Appellant was ineligible for CDCSP benefits for the months of July and August 2019 because he had not yet applied for the program with the Respondent and had not applied for SSI at that time.
- 4) The Appellant's eligibility for CDCSP benefits for the months of September, October and November 2019 cannot be determined because no evidence was provided to verify that the Appellant was informed of the SSI application/denial requirements when he began the CDCSP application process.
- 5) The Appellant's case is remanded to the Respondent's Bureau for Medical Services for reevaluation of CDCSP eligibility for the months of September through November 2019. The Respondent should determine whether the Appellant was advised of the SSI application requirements during the CDCSP application process and whether the Appellant's medical eligibility determination date was unduly delayed as a result.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny the Appellant's CDCSP benefits for July and August 2019. The issue of CDCSP eligibility for the months of September through November 2019 is **REMANDED** to the Respondent's Bureau for Medical Services for reevaluation of the Appellant's medical eligibility date. The Respondent should determine whether the Appellant's medical eligibility date was unduly delayed due to the Department's failure to advise the Appellant of SSI application/denial requirements. Following the determination, the Bureau for Medical Services must inform the [REDACTED] County DHHR of its decision and the income maintenance unit must issue notice of the reevaluation decision to the Appellant.

ENTERED this 30th Day of April 2020.

**Pamela L. Hinzman
State Hearing Officer**