



**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**

May 1, 2020

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR  
ACTION NO.: 20-BOR-1492

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: [REDACTED]  
Bureau for Medical Services

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

█, A JUVENILE,

**Appellant,**

v.

**Action Number: 20-BOR-1492**

**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 April 29, 2020, on an appeal filed April 9, 2020.

The matter before the Hearing Officer arises from the March 17, 2020, decision by the Respondent to terminate services under the Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by █, Nurse Review with █. The Appellant appeared by his mother, █. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Manual Chapter 526
- D-2 CDCSP Renewal Application Denial dated March 17, 2020
- D-3 CDCSP Level of Care Evaluation (DD-2A) dated January 17, 2020
- D-4 CDCSP Acute Care Hospital or Nursing Facility Level of Care Evaluation (DD-2B) dated January 17, 2020
- D-6 Medical Records from █, M.D., dated January 17, 2020

**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 Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant underwent an annual reevaluation for CDCSP services under nursing facility level of care.
- 2) The Level of Care Evaluation submitted with the Appellant's reevaluation documented that the Appellant used two (2) over-the-counter medications administered orally (Exhibit D-4).
- 3) The evaluation listed areas that required special care were feeding, due to the use of a bottle and communication, in which the Appellant was non-verbal and used gestures to communicate (Exhibit D-4).
- 4) The evaluation noted that the Appellant was delayed in several other activities of daily living but did not specify that special care or treatments were utilized to address the delays (Exhibit D-4).
- 5) The Respondent notified the Appellant on March 17, 2020 that his renewal application had been denied as the criteria for continued medical eligibility had not been met. Specifically, there were no complex nursing treatments, personal care and/or complex medical equipment being utilized (Exhibit D-2).

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §526.1 states CDCSP services under Nursing Facility (NF) level of care are skilled services that are needed on a daily basis that must be provided on an inpatient (distinct part of an institution) basis and ordered by, and provided under the direction of a physician. Nursing facility level of care is appropriate for individuals who do not require acute hospital care, but, on a regular basis, require nursing services, or other health-related services ordinarily provided in a medical facility. With respect to an individual who has a mental illness or intellectual disability, nursing facility level of care services are usually inappropriate unless that individual's mental health needs are secondary to needs associated with a more acute physical disorder.

Bureau for Medical Services Provider Manual §526.6.1 states nursing facility level of care is appropriate for a child who does not require acute hospital care, but who, on a regular basis, require skilled nursing services, complex rehabilitation services, and other health-related services ordinarily provided in a medical facility. Skilled nursing services are provided to a child living at home who have significant medical needs and require complex nursing treatments, personal care, specialized therapy, and medical equipment to enhance or sustain their lives. The child's daily

routine is substantially altered by the need to complete specialized, complex, and time-consuming treatments.

A nursing facility level of care is appropriate when the child requires complex skilled nursing care or comprehensive rehabilitative interventions throughout the day including **ALL** of the following:

1. The child requires skilled nursing or skilled rehabilitation services that must be performed by, or under the supervision of professional or technical personnel; AND
2. The child requires specialized professional training and monitoring beyond the capability of, and those ordinarily expected of parents; AND
3. The child requires skilled observation and assessment several times daily due to significant health needs; AND
4. The child requires these skilled services on a daily basis; AND
5. A skilled nursing facility setting must be furnished pursuant to a physician's order and be reasonable and necessary for the treatment of an child's illness or injury (i.e., be consistent with the nature and severity of the individual's injury or illness, his particular medical needs and accepted standards of medical practice); AND
6. The child has unstable health, functional limitations, complicating conditions, or is medically fragile such that there is a need for active care management; AND
7. The child's impairment substantially interferes with the ability to engage in everyday activities of daily living at home and in the community, including but not limited to bathing, dressing, toileting, feeding, and walking/mobility; AND
8. The child's daily routine is substantially altered by the need to complete these specialized, complex and time-consuming treatments and medical interventions or self-care activities; AND
9. The child needs complex care management and/or hands on care that substantially exceeds age appropriate assistance; AND
10. The child needs complex restorative, rehabilitative, and other special treatment of a chronic nature that can be provided only in a skilled nursing facility. In other words, institutionalization in a nursing facility would be necessary in the absence of these services provided in the community setting; AND
11. In addition to the general requirements above, the child's condition must require one or more of the following defined settings below on a daily basis:
  - Observation, assessment and monitoring of a complicated or unstable condition; OR
  - Complex teaching services to the child and/or family requiring 24-hour skilled nursing facility (SNF) setting vs. intermittent home health setting; OR
  - Complex medication regimen other than oral medication or medication otherwise deemed self-administered, such as insulin or growth hormone; OR
  - Initiation of tube feedings; OR
  - Active weaning of ventilator dependent children requiring changing and monitoring of ventilator setting; OR
  - Wound care (including decubitus ulcers) requiring more than just superficial dressing changes, i.e. packing, debridement, etc.

Bureau for Medical Services Provider Manual §526.6.3 a skilled nursing facility setting is considered not medically necessary when ANY ONE of the following is present:

- Services do not meet the medically necessary criteria above; OR
- The child's condition has changed such that skilled medical or rehabilitative care is no longer needed; OR
- Physical medicine therapy or rehabilitation services that will not result in improvement in the level of functioning within a reasonable period of time; OR
- Services that are solely performed to preserve the present level of function or prevent regression of functions for an illness, injury or condition that is resolved or stable; OR
- The child and or family refuses to participate in the recommended treatment plan; OR
- The care has become custodial; OR
- The services are provided by a family member or another non-medical person. When a service can be safely and effectively performed (or self-administered) by the average non-medical person without the direct supervision of a nurse, the service cannot be regarded as a skilled service.

### **DISCUSSION**

CDCSP services under nursing facility level of care is appropriate for a child who does not require acute hospital care, but who, on a regular basis, requires skilled nursing services, complex rehabilitation services, and other health-related services ordinarily provided in a medical facility. Skilled nursing services are provided to a child living at home who has significant medical needs and requires complex nursing treatments, personal care, specialized therapy, and medical equipment to enhance or sustain their lives. Policy sets forth specific medical criteria that must be met to approve nursing facility level of care services.

██████████, nurse reviewer for the Respondent, reviewed the Appellant's renewal application and determined that due to an improvement in his health condition, he no longer met the criteria for nursing facility level of care. Nurse ██████████ testified that policy requires that all eleven (11) active skilled nursing care or comprehensive rehabilitative interventions be present to meet eligibility for nursing facility level of care and of the 11 identified in policy, the documentation submitted only supported that five (5) were present.

Nurse ██████████ testified that the Appellant no longer has a gastrostomy tube, he does not take medications that require a complex administration regime and does not receive treatments that can only be provided in a facility setting. Nurse ██████████ contended that the Appellant's care is considered custodial and can be safely performed by family members without direct supervision of a nurse.

The Appellant's mother, ██████████, testified the Appellant continues to receive occupational therapy, speech therapy, physical therapy and developmental therapy, the cost of which is not entirely covered by private health insurance. Ms. ██████████ contended that the Appellant's heart rate, blood pressure and oxygen levels are monitored at home by family members, and that he may require another gastrostomy tube if he continues to lose weight.

The documentation submitted failed to support that the Appellant's care requires skilled nursing services that would normally be provided in a nursing facility under the direct supervision of a physician, therefore continued medical eligibility for nursing facility level of care could not be established.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, nursing facility level of care is appropriate for a child who, on a regular basis, requires skilled nursing services, complex rehabilitation services, and other health-related services ordinarily provided in a medical facility.
- 2) The Appellant does not receive specialized treatments or medications that require skilled nursing services or the direct supervision of a physician.
- 3) The Appellant no longer meets the criteria for services under nursing facility level of care.

### **DECISION**

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

**ENTERED this 1<sup>st</sup> day of May 2020.**

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**Kristi Logan**  
**State Hearing Officer**