



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

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 30018
Tara.B.Thompson@wv.gov

Jolynn Marra
Interim Inspector
General

November 18, 2020



RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 20-BOR-2242

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Kerri Linton, Psychological Consultation and Assessment (PC&A)
Sarah Clendenin, PC&A
Nora Dillard, Bureau for Medical Services

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

■, A MINOR,

Appellant,

v.

ACTION NO.: 20-BOR-2242

**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 minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on October 28, 2020 on an appeal filed with the Board of Review on September 24, 2020.

The matter before the Hearing Officer arises from the Respondent's August 25, 2020 denial of the Appellant's medical eligibility for the Children with Disabilities Community Service Program (CDCSP).

At the hearing, the Respondent appeared by Linda Workman, Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant appeared *pro se*, by his mother, ■. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 DHHR Notice, dated August 25, 2020
- D-2 Bureau for Medical Services Chapter 526
- D-3 DHHR CDCSP Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation —Form CDCSP-2A, signed by physician on July 30, 2020
- D-4 DHHR CDCSP Comprehensive Psychological Evaluation, signed July 24, 2020
- D-5 ■ Children's Developmental Assessment, completed July 16, 2020
- D-6 ■ Children's Neurodevelopmental Center Developmental Assessment, completed December 11, 2019

- D-7 [REDACTED] letter, viewed on September 11, 2020; [REDACTED] letter, dated September 8, 2020; [REDACTED] Adaptive Behavior Assessment System, Third Edition, dated March 6, 2020; [REDACTED] Authorization Request- Treatment Plan; WVU Medicine Letter, dated September 17, 2020; [REDACTED] letter, signed September 17, 2020; [REDACTED] Occupational Therapy Progress Report, dated June 8 through September 8, 2020; [REDACTED] Pediatric Occupational Therapy Evaluation, dated January 24, 2020; [REDACTED] letter, dated September 10, 2020; Education Program Team Meeting, dated July 22, 2020; [REDACTED] School Eligibility Committee Report and Determination Checklist, dated August 6, 2020; Prior Written Notice of District's Proposal/Refusal, dated August 5, 2020; Parent Information Form; [REDACTED] Letter; [REDACTED] Schools Individualized Education Program, meeting dated August 5, 2020; and [REDACTED] School Specialized Transportation Plan
- D-8 [REDACTED] Board of Education Psychoeducational Evaluation, dated July 20, 2020
- D-9 [REDACTED] Schools Speech and Language Evaluation Report, dated July 20, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant, by his mother, submitted an initial application for medical eligibility for CDCSP (Exhibit D-1).
- 2) The Appellant is five-years-old (Exhibits D-1, D-4, and D-5).
- 3) On July 30, 2020, a physician certified that the Appellant required an ICF/IID level of care (Exhibit D-3).
- 4) On August 25, 2020, the Respondent issued a notice advising the Appellant that his medical eligibility for CDCSP had been denied because the documentation submitted for consideration did not support the presence of an eligible diagnosis, related condition, or substantial adaptive deficits in three or more of the six major life areas necessary for ICF/IID eligibility (Exhibit D-1).
- 5) The Appellant does not have a diagnosis of Intellectual Disability Disorder (IDD) (Exhibits D-3 through D-9).

- 6) The Appellant has diagnoses of ADHD, combined presentation, and Autism Spectrum Disorder, Level 1 social communication, Level 2 restricted, repetitive behaviors, with accompanying expressive language disorder, without accompanying intellectual impairment (Exhibits D-3 through D-9).
- 7) To establish Autism as a related CDCSP-eligible diagnosis, the Appellant had to be diagnosed as Autism, Level 3—severe.

APPLICABLE POLICY

West Virginia Bureau for Medical Services (BMS) Manual § 526.2.1.1 Medical Eligibility provides in part:

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

- i. Nursing Facility; or
- ii. ICF/IID; or
- iii. Acute Care Hospital ...

BMS Manual § 526.5.1 Medical Eligibility for ICF/IID Level of Care provides in part:

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 The child must meet the medical eligibility in this section and in Section 526.5.2 and its subparts to be eligible for this program.

BMS Manual § 526.5.2.1 Diagnosis for ICF/IID Level of Care provides in part:

To be medically eligible, the child must have a diagnosis of intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits, manifested before age 19.

Autism is a related condition which may, if severe and chronic in nature, make a child eligible for this program. 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 intellectual disability, and requires services similar to those required for persons with intellectual disabilities. Additionally, related conditions with associated concurrent adaptive deficits are likely to continue indefinitely.

Medical eligibility is based on the Annual Medical Evaluation, the Psychological Evaluation, and verification—if not indicated in the psychological evaluation, and

documents that the related condition with associated concurrent adaptive deficits are severe, and are likely to continue indefinitely. Other documents that may be considered—if applicable and available—included the Individualized Education Plan (IEP) for a school age child, and Birth to Three assessments.

DISCUSSION

The Appellant contested the Respondent's denial of CDCSP eligibility and argued that the evidence verified substantial functioning limitations which should qualify the Appellant for CDCSP eligibility. To be medically eligible, the child must have a diagnosis of intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits, manifested before age 19. To prove that the Appellant was correctly denied CDCSP eligibility, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis or that the Appellant failed to present with adaptive deficits in at least three functioning areas.

The evidence established that the Appellant has borderline intellectual functioning and does not have a diagnosis of Intellectual Disability Disorder. Pursuant to the policy, the Appellant's Autism diagnosis must constitute a severe and chronic disability with concurrent substantial deficits. The Respondent testified that to meet this criteria, the Respondent had to be diagnosed with Autism, Level 3. The evidence verified that the Appellant was diagnosed with Autism, Level 1 and Level 2, which fell below the severity threshold to establish the Appellant's Autism diagnosis as an eligible related severe and chronic condition.

Although the Appellant argued that the Appellant had significant adaptive deficits in at least three functioning areas, without an eligible diagnosis, the Appellant's eligibility for CDCSP could not be affirmed.

CONCLUSIONS OF LAW

- 1) To be eligible for CDCSP, a child must have a diagnosis of intellectual disability or related condition which constitutes a severe and chronic disability.
- 2) A diagnosis of Autism Spectrum Disorder, Level 3—severe, is a CDCSP-eligible diagnosis.
- 3) The preponderance of evidence failed to establish that the Appellant's diagnosis met eligibility criteria.
- 4) As the policy requires the presence of an eligible diagnosis and substantial deficits and the Appellant lacked an eligible diagnosis, the Respondent correctly denied the Appellant's application for CDCSP eligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant eligibility for the Children with Disabilities Community Service Program.

ENTERED this 18th day of November.

Tara B. Thompson, MLS
State Hearing Officer