



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

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Jolynn Marra
Inspector General

May 24, 2022

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1435

Dear [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
Sarah Clendenin, Psychological Consultation and Assessment

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

■■■■, A MINOR,

Appellant,

v.

ACTION NO.: 22-BOR-1435

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on May 4, 2022 on an appeal filed with the Board of Review on March 24, 2022.

The matter before the Hearing Officer arises from the Respondent's February 23, 2022 decision to deny the Appellant medical eligibility for the Children with Disabilities Community Service Program (CDCSP).

At the hearing, the Respondent appeared by Linda Workman, Psychologist, Psychological Consultation and Assessment. The Appellant appeared *pro se* by ■■■■■■■■■■, the Appellant's mother. Both witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Chapter 526
- D-2 DHHR Notice, dated February 23, 2022
- D-3 CDCSP Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation, signed February 22, 2022
- D-4 WVU Medicine Children's Developmental Assessment, dated December 15, 2021
- D-5 BMS Cost Estimate Worksheet

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 applied for eligibility for CDCSP.
- 2) On February 23, 2022, the Respondent issued a notice advising that the Appellant's medical eligibility for CDCSP was denied because the documentation failed to support the presence of an eligible diagnosis for the ICF/IID level of care and because documentation submitted failed to support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID eligibility (Exhibit D-2).
- 3) The February 23, 2022 notice reflected that the Appellant had substantial limitations in the major life area of *self-care* (Exhibit D-2).
- 4) The Respondent's denial was based on review of Medical Evaluation (CDCSP-2A), [REDACTED] Developmental Assessment, Cost Estimate, and SSI Denial (Exhibit D-2).
- 5) On February 2, 2022, the Medical Evaluation (CDCSP-2A) was signed by a physician (Exhibit D-3).
- 6) The physician listed Autism Spectrum Disorder, Speech Delay as the Appellant's diagnosis (Exhibit D-3).
- 7) The physician's signature certified that the Appellant's developmental disability needs are documented in the evaluation and the Appellant requires ICF/IID level of care and can be served by CDCSP (Exhibit D-3).
- 8) On December 15, 2021, a developmental assessment and comprehensive psychological evaluation were signed by [REDACTED], PsyD (Exhibit D-4).
- 9) On the Developmental Profile - 4th edition (DP-4), standard scores of 55 or below indicate substantial developmental delay (Exhibit D-4).
- 10) The Appellant's DP-4 scores ranged from 62 through 88 (Exhibit D-4).
- 11) On the Adaptive Behavior Assessment System, Third edition (ABAS-3), areas with scores of 1 or 2 are areas with substantial limitations (Exhibit D-4).
- 12) The Appellant's ABAS-3 scores was 1 in the area of *self-care*, in the areas of *communication*, *learning*, *self-direction*, *mobility*, and *capacity for independent living*, the Appellant's scores ranged from 5 through 10 (Exhibit D-4).

- 13) [REDACTED], Psy D, diagnosed the Appellant with Autism Spectrum Disorder, level 2 social communication, level 2 restricted, repetitive behaviors, with accompanying language disorder (Exhibit D-4).

APPLICABLE POLICY

BMS Manual §§ 526.2.1, 526.2.2, and 526.5.1 provide in pertinent parts:

To be eligible for the Medicaid Children with Disabilities Community Services Program (CDCSP), the applicant must meet the level of care for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and meet financial eligibility.

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. Evaluations of the child must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services provided for in an ICF/IID

The child must meet the medical eligibility criteria in this section and in each of the following sections 526.5.2 and its subparts in order to be eligible for CDCSP.

BMS Manual §§ 526.5.2 and 526.5.2.1 provide in pertinent parts:

Medical Necessity for ICF/IID level of care is determined by the evaluation of the child's diagnosis, functionality, and need for active treatment.

A diagnosis of Autism may be an eligible diagnosis if the diagnosis constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 19. Level of care is based on the Medical Evaluation (CDCSP-2A), Psychological Evaluation (CDCSP-3), verification, and documents that the related condition with associated concurrent adaptive behaviors, are severe, and are likely to continue indefinitely. Other documents, if applicable and available, that can be utilized include the Individualized Education Program (IEP) for a school age child and Birth to Three assessments.

BMS Manual § 526.5.2.2 provides in pertinent part:

The child must have substantial deficits in three (3) of the six major life areas as listed below. Substantial deficits associated with a diagnosis other than an eligible condition do not meet eligibility criteria. Additionally, any child needing only

personal care services does not meet eligibility criteria for ICF/IID level of care.

1. *Self-Care* refers to such basic activities 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 subdomains: home living, social skills, employment, health and safety, community use, and leisure activities. At a minimum, three 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 these 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 Appellant submitted an initial application for Medicaid CDCSP benefit eligibility. The Respondent issued a notice advising the Appellant that her application for CDCSP benefits was denied because the documentation submitted did not demonstrate the presence of an eligible diagnosis or the presence of substantial adaptive deficits in three or more of the six major life areas.

The Respondent had to prove by a preponderance of the evidence that the Appellant lacked an eligible diagnosis and that the Appellant lacked substantial adaptive deficits in at least three

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

The presence of substantial deficits must be supported by relevant test scores and narrative descriptions contained in the documentation submitted. While the evidence indicated that the Appellant has delays in multiple functioning areas, the preponderance of the evidence failed to verify substantial deficits as evidenced by required relevant test scores.

The Appellant's representative testified that scaled scores derived from normative samples of children should not be used to determine the Appellant's eligibility for CDCSP. The Board of Review does not have the authority to make changes or provide exceptions to the eligibility criteria established by the policy and can only determine whether the Respondent correctly determined the Appellant's eligibility for CDCSP pursuant to the criteria specified in the policy.

The Appellant's representative testified that persons with Autism Spectrum Disorder go through periods of improvement and regression. The Appellant's representative argued that the Appellant should be eligible for CDCSP because she requires substantial treatment assistance and that the family cannot financially afford her necessary treatment. While the evidence reflects physician recommendations for treatment, the Board of Review cannot establish eligibility for CDCSP beyond the criteria stipulated by the policy.

CONCLUSIONS OF LAW

- 1) To be eligible for CDCSP, a child must have a diagnosis of intellectual disability or a related condition which constitutes a severe and chronic disability.
- 2) A diagnosis of Autism Spectrum Disorder, Level 3, is an eligible related condition which constitutes a severe and chronic disability.
- 3) The preponderance of evidence failed to establish that the Appellant's diagnosis met eligibility criteria.
- 4) To demonstrate severe adaptive deficits, the Appellant had to have adaptive functioning scaled scores of 1 or 2 in at least three of the six major life areas.
- 5) The preponderance of evidence demonstrated that the Appellant has substantial adaptive deficits in one of the six major life areas.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's medical eligibility for CDCSP.

ENTERED this 24th day of May 2022.

Tara B. Thompson, MLS
State Hearing Officer