



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Inspector General**

October 13, 2022

[REDACTED]

RE: [REDACTED], A Protected Individual v. WV DHHR
ACTION NO.: 22-BOR-2067

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 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Bureau for Medical Services
PC&A

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

■, A Protected Individual,

Appellant,

v.

Action Number: 22-BOR-2067

**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 Protected Individual. 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 September 28, 2022, on an appeal filed August 29, 2022.

The matter before the Hearing Officer arises from the August 10, 2022, decision by the Respondent to deny medical eligibility for services under the Children with Disabilities Community Service Program (CDCSP) ICF/IID Level of Care .

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by his mother, ■. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual Chapter 526
- D-2 Denial Notice, dated August 15, 2022
- D-3 West Virginia Department of Health and Human Resources Children with Disabilities Community Services Program (CDCSP) Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), Level of Care Evaluation, Annual Renewal, dated July 12, 2022
- D-4 Independent Psychological Evaluation (IPE), Evaluation Dates: 06/21/2022; 07/13/2022; 07/24/2022, West Virginia I/Dd Waiver
- D-5 Notice of Denial, Amended September 9, 2022

Appellant's Exhibits:

- A-1 Individualized Education Program, [REDACTED] County Schools, Central Office, IEP Meeting Date April 26, 2022
- A-2 [REDACTED] After Visit Summary, July 12, 2022
- A-3 Genetic Test Report, August 20, 2021

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) On July 12, 2022, the Appellant submitted his annual renewal for the CDCSP program, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care, CDCSP – 2A signed by a physician. (Exhibit D-3)
- 2) On August 15, 2022, the Respondent issued a notice advising that the Appellant's CDCSP renewal application was denied because the documentation 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 August 15, 2022 notice reflected that the Appellant had substantial limitations in the major life areas of *Self-Care and Capacity for Independent Living*. (Exhibit D-2).
- 4) On September 9, 2022, the Respondent sent an amended notification of denial after evaluation of additional documentation submitted, 4/26/22 IEP and 7/12/22 UVA After Visit Summary, failed to support any additional adaptive deficits. (Exhibit D-5)
- 5) The Appellant underwent an IPE over the course of three sessions due to his non-cooperation on June 21, 2022, July 13, 2022, and July 24, 2022. (Exhibit D-4)
- 6) The Respondent found that the Appellant does meet the diagnosis criteria with a diagnosis of Mild Intellectual Disability (ID).
- 7) The Appellant has a diagnosis of Doose Syndrome.
- 8) The Appellant's mother contests the findings in the major life areas of *Receptive or Expressive Language, Learning, and Mobility*.
- 9) The Appellant is able to speak and undergoes speech therapy twenty minutes per week through his IPE established by the [REDACTED] County Schools. (Exhibits D-4 and A-1)
- 10) The Adaptive Behavior Assessment Scale – 3rd Edition (ABAS-3), sub-scales, based upon the Appellant's mother's ratings, showed adaptive behaviors in the mildly impaired range, and only an eligible score of 1 in the area of community use. (Exhibit D-4)

11) The Appellant was scored a 5 on the ABAS-3 sub-scale in Functional Academics and Communication. (Exhibit D-4)

12) The Appellant is ambulatory. (Exhibits D-3, D-4, A-1, and A-2)

APPLICABLE POLICY

BMS Manual, Chapter 525, §526.7, *RE-DETERMINATION OF MEDICAL ELIGIBILITY*, explains that re-determination of medical eligibility must be completed annually for each member, pursuant to federal law. An individual must apply for recertification at least annually. Eligibility determination must be made on current eligibility criteria, not on past CDCSP eligibility. The fact that a member had previously received CDCSP services shall have no bearing on continued eligibility for this program. All documentation required for initial certification must be updated and submitted annually. The date the initial CDCSP-2A or CDCSP-2B was signed by the physician becomes the member's anchor date. The expiration date of the member's medical re-eligibility is 365 days from the anchor date. For members seeking re-determination of medical eligibility under the ICF/IID Level of Care a psychological evaluation (CDCSP-4) dated within 90 days of the member's anchor date must be submitted.

BMS Manual, Chapter 525, §526.5.2.1, *Diagnosis for ICF/IID Level of Care*, requires that 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. 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, Chapter 525, §526.5.2.2, *Functionality for ICF/IID Level of Care*, requires that 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:
 - home living,
 - social skills,
 - employment,
 - health and safety,
 - community use,
 - 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

On August 15, 2022, the Appellant's annual re-application for CDCSP ICF/IID Level of Care services was denied by the Respondent. The Respondent issued a notice advising that the Appellant's CDCSP renewal application was denied because the documentation failed to support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID eligibility. The Respondent found that the Appellant had substantial limitations in the

major life areas of *Self-Care and Capacity for Independent Living* (CIL). A reconsideration of the August 15, 2022 denial resulted in an amended denial notice dated September 9, 2022 after reviewing additional documentation submitted by the Appellant – April 26, 2022 IEP and July 12, 2022 UVA After Visit Summary.

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the CDCSP ICF/IID Level of Care program: 1) *Diagnosis* of Intellectual Disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 19; 2) *Functionality for ICF/IID Level of Care* of at least three (3) substantial adaptive deficits out of the six (6) major life areas, and 3) *Active Treatment* for ICF/IID Level of Care. Failure to meet any one of the eligibility categories results in a denial of program services.

The Respondent's representative, Linda Workman, evaluated the Appellant's CDCSP annual renewal application. Ms. Workman found that the Appellant's diagnosis of Mild Intellectual Disability (ID) met the diagnosis criteria for program eligibility. However, in reviewing the Appellant's supporting documentation, she only found two out of the required three substantial adaptive deficits in the functional areas of *Self-Care* and *CIL*.

The Appellant's mother, [REDACTED], contests the findings in the major life areas of *Receptive or Expressive Language, Learning, and Mobility*. [REDACTED] avers that the psychologist, who performed the IEP over the course of three separate days, did not fairly evaluate the Appellant and that the scores given were not accurate. However, [REDACTED] scored the ABAS-3 and rated the Appellant as a 5 in *Communication* and *Functional Academics*. Other tests were not able to be completed due to the Appellant's non-cooperation with the testing. Additionally, Ms. Workman pointed out that in the Appellant's April 2022 IPE (hereinafter referred to as IPE), he is only receiving 20 minutes per week of speech therapy which does not indicate a severe deficit in *Receptive or Expressive Language*. Also, the IPE reported that the Appellant is able to make his needs and wants known such as asking for more of an object or food, and when willing, can point to a picture that is named out of a set of two. The IPE noted that the Appellant shows understanding of spatial concepts such as in, on, and off, and understands first and then concepts. The Appellant did not establish substantial adaptive deficits in the areas of *Receptive or Expressive Language, or Learning*.

The evidence presented showed that the Appellant is mobile, although requiring assistance at times. The June 2022 IPE noted that the Appellant was fully ambulatory, and his April 2022 IPE showed that he has mild mobility delays but uses ambulation as his primary means of mobility. The April 2022 IPE also indicated that the Appellant is able to walk, run, dance, and jump. The Appellant did not establish a substantial adaptive deficit in the area of *Mobility*.

Whereas the evidence presented did not establish that the Appellant had additional substantive deficits to meet medical eligibility for CDCSP ICF/IID Level of Care services, the Respondent's decision to deny the Appellant's annual renewal application is affirmed.

CONCLUSION OF LAW

Whereas the Appellant does not meet the medical eligibility criteria for the CDCSP ICF/IID Level of Care services set forth by policy, the Respondent must deny his application.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's CDCSP ICF/IID Level of Care renewal application.

ENTERED this 13th day of October 2022.

Lori Woodward, Certified State Hearing Officer