



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

October 11, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2316

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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

cc: Sarah Clendenin, PCA Inc.

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

████████████████████,

**Appellant,**

**v.**

**Action Number: 16-BOR-2316**

**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 September 29, 2016, on an appeal filed July 19, 2016.

The matter before the Hearing Officer arises from the June 23, 2016, decision by the Respondent to deny the Appellant's application for continued benefits through the Medicaid Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared Leigh Ann Stone, RN, a contracted employee of Psychological Consultation and Assessment (hereinafter PC&A). The Appellant appeared by his mother ██████████. The participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Children with Disabilities Community Services Program (CDCSP) Renewal Application denial notice, dated June 23, 2016
- D-2 WV Medicaid Provider Manual Chapter 526, Children with Disabilities Community Services Program (CDCSP) §526.6.1
- D-3 Form DD-2A, CDCSP Level of Care Evaluation, completion date May 19, 2016
- D-4 Form DD-2B, CDCSP Medical Evaluation, completion date May 26, 2016
- D-5 Form DD-4, WV DHHR Social History, dated May 19, 2016

**Appellant's Exhibits:**

- A-1 Report from [REDACTED], [REDACTED]  
[REDACTED] dated November 19, 2015
- A-2 Report from [REDACTED], [REDACTED]  
[REDACTED] dated December 2, 2015
- A-3 Report from [REDACTED], [REDACTED]  
[REDACTED] unit, dated June 22, 2016
- A-4 Report from [REDACTED], [REDACTED]  
[REDACTED], dated August 9, 2016

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 a participant member of the Medicaid Children with Disabilities Community Services Program (CDCSP). His parents completed an annual redetermination of his eligibility for the program in May 2016, based on a Nursing Facility Level of Care.
- 2) As part of the Appellant's annual redetermination, his parents submitted a form DD-2A, CDCSP Level of Care Evaluation dated May 19, 2016 (Exhibit D-3), a form DD-2B CDCSP Medical Evaluation dated May 26, 2016 (Exhibit D-4), and a form DD-4 Social History dated May 19, 2016 (Exhibit D-5).
- 3) The State of West Virginia has contracted a private psychological services agency, PC&A of Cross Lanes, WV, to evaluate applications and conduct annual redeterminations for CDCSP.
- 4) On June 23, 2016, PC&A denied the Appellant's redetermination for CDCSP. PC&A sent a denial letter to the Appellant's parents on that date (Exhibit D-1).
- 5) The Appellant's representative, his mother, requested a fair hearing to protest the denial of the Appellant's redetermination.

**APPLICABLE POLICY**

WV Medicaid Provider Manual Chapter 526 reads as follows in pertinent part regarding medical eligibility for the Children with Disabilities Community Services Program (CDCSP).

**526.6.1 Medical Eligibility for Nursing Facility Level of Care**

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 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.

### **526.7 Re-Determination of Medical Eligibility**

Re-determination of medical eligibility [for CDCSP] 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 previously had received CDCSP services shall have no bearing on continued eligibility for the program.

## **DISCUSSION**

CDCSP policy found in the WV Medicaid Provider Manual §526.7 requires a CDCSP member to complete a redetermination of medical eligibility for the program annually. In May 2016, the Appellant's parents submitted the required documents to PC&A for this redetermination. PC&A denied the redetermination request on June 23, 2016.

The denial letter (Exhibit D-1) reads as follows regarding the reason for denial: "Based on the information submitted, eligibility is denied for the following reasons: [Appellant] does not meet criteria for Nursing Facility Level of Care. There are no complex medications (no medications listed) or treatments that are required. Other than the catheterization for the bladder, there are no other nursing services or complex rehabilitation services evident."

The PC&A contracted reviewer who evaluated the redetermination testified that nothing was listed on the CDCSP Level of Care Evaluation (Exhibit D-3) that met the policy requirement of "skilled nursing or skilled rehabilitation services that must be performed by or under the supervision of professional or technical personnel." The evaluation documents that the Appellant must have bladder catheterizations five to six times per day, but the parents have been trained to perform this medical function and no skilled personnel are required.

The Appellant's representative, his mother, testified that he does have a diagnosis of chronic kidney disease. She did not know why this was not noted in the CDCSP Medical Evaluation (Exhibit D-4). The Appellant's mother submitted into evidence letters from [REDACTED]

████████████████████(Exhibits A-1 and A-2) that document the Appellant's ongoing kidney difficulties. However, these letters do not indicate that the Appellant requires skilled nursing or rehabilitation services required by CDCSP policy.

As a result, the Department acted correctly to deny the Appellant's redetermination request for the Children with Disabilities Community Services Program.

### **CONCLUSIONS OF LAW**

The Appellant's request for redetermination for CDCSP does not meet the medical criteria for the program. The Department acted correctly to deny the Appellant's redetermination request, pursuant to the WV Medicaid Provider Manual, Chapter 526, §526.6.1.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's denial of the Appellant's redetermination of eligibility for the Children with Disabilities Community Services Program.

**ENTERED this 11<sup>th</sup> day of October 2016**

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**Stephen M. Baisden**  
**State Hearing Officer**