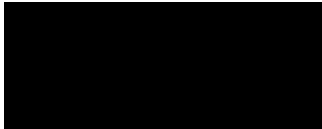
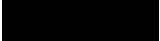




July 1, 2026



RE:  A PROTECTED INDIVIDUAL v. WVDOHS-BMS  
ACTION NO.: 26-BOR-2004

Dear 

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 Human Services. These same laws and regulations are used in all cases to ensure 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,

Eric L. Philips  
Certified State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: BMS/PC&A/Acentra

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 26-BOR-2004**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU FOR MEDICAL SERVICES,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on June 24, 2026, on an appeal filed with the Board of Review on May 19, 2026.

The matter before the Hearing Officer arises from the April 21, 2026 decision by the Respondent to deny the Appellant's application for the Children with Disabilities Community Services Program (CDCSP).

At the hearing, the Respondent appeared by Leanne Stone, RN Nurse Reviewer-PC&A. The Appellant was represented by her mother, ■ All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau of Medical Services Provider Manual Chapter 526-Children with Disabilities Community Services Program
- D-2 Notice of Decision dated April 21, 2026
- D-3 Children with Disabilities Community Services Program Information Sheet
- D-4 Children with Disabilities Community Services Program Level of Care Evaluation
- D-5 Children with Disabilities Community Services Program 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 Hearing Officer sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) The Appellant is a 16-year-old juvenile.
- 2) In March 2026, the Appellant, through her mother, submitted information to the Respondent for consideration of her continued eligibility for the Children with Disabilities Community Services Program (CDCSP). (Exhibit D-3 through Exhibit D-5)
- 3) The Appellant has a primary diagnosis of Psychogenic Non-Epileptic Episodes and Anxiety. (Exhibit D-4)
- 4) The Appellant has a secondary diagnosis of Conversion Disorder. (Exhibit D-4)
- 5) The Appellant's physician, [REDACTED] M.D., recommended an acute care hospital on the CDCSP Level of Care Evaluation. (Exhibit D-4)
- 6) On April 21, 2026, the Respondent issued a Notice of Decision (Exhibit D-2) informing the Appellant that her renewal application for the CDCSP had been denied. The reason listed for the denial was:

“The documentation provided does not support the required criteria for an Acute Hospital or Nursing Facility Level of Care set forth in CDCSP policy. The documentation does not indicate complex medications or treatments and there are no specialized, complex or time-consuming treatments or medical interventions that substantially interfere with daily routines. Documentation does not suggest the need for specialized training or monitoring that is beyond the capability of the parent. In addition, there is no mention of needed skilled observation and assessment several times daily due to significant health needs.”

**APPLICABLE POLICY**

Bureau for Medical Services Policy Manual 526.1 documents:

526.1 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

Targeted Population includes:

- A child, through the age of 18 (Soc. Sec. Act, Sect. 1902(e)(3)(A)), who lives with their adoptive or biological family, and;
- Who has a disability that qualifies him/her to receive Supplemental Security Income (SSI), but who is denied SSI because their parents' income or assets exceeds the Social Security Administration guidelines;
- Whose care is provided in his/her home and community setting at the same level of quality and does not exceed the cost of care in a medical facility (nursing facility, ICF/IID or acute care hospital), and;
- Whose care requires the level of services provided in one of the following medical facilities:

**Acute Care Hospital Level of Care:** medical services and/or nursing services for a child who is at risk of hospitalization in an acute care hospital setting. Inpatient services are defined as services ordinarily furnished in a hospital for care and treatment of inpatients and furnished under the direction of a physician. 42 Code of Federal Regulations (CFR) §440.10.

- Hospital level of care is appropriate for individuals who continuously require the type of care ordinarily provided in a hospital, and who, without these services, would require frequent hospitalizations. This level of care is highly skilled and provided by professionals in amounts not normally available in a skilled nursing facility but available in a hospital.

**Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID):** active treatment for individuals with intellectual disabilities and/or related conditions (e.g. cerebral palsy, autism, traumatic brain injury) who require the type of active treatment typically provided by a facility whose primary purpose is to furnish health and habilitation services to persons with intellectual disabilities or related conditions. 42 CFR §440.150

**Nursing Facility:** 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. 42 CFR, Part §483

- 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 Policy Manual 526.2.1 documents:

Medical eligibility is comprised of two components:

1. 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; AND

2. The cost of medical care the applicant incurred in the 12 months prior to application is less than the costs that would have been incurred in the medical facility level of care (nursing facility, ICF/IID, or acute care hospital) during the same period. The medical costs per type of medical facility (nursing facility, ICF/IID, or acute care hospital) are posted on the BMS website and updated annually.

Bureau for Medical Services Policy Manual 526.4.1 documents:

#### 526.4.1 Medical Eligibility for Acute Care Hospital Level of Care

Acute care hospital level of care is appropriate for a child who requires the type of care ordinarily provided in a hospital, and who, without these services, would require frequent, continuous, or prolonged hospitalizations. This level of care is highly skilled, provided by professionals, and is not normally available in a skilled nursing facility, but available only in an inpatient acute care hospital setting. This level of care is appropriate when a child requires, throughout the day, an extensive array of services furnished either directly by, or under the direct supervision of, a physician. This daily skilled medical treatment is more complex than nursing facility level of care due to an unstable medical condition.

526.4.2 Medical Necessity for Acute Care Hospital Level of Care The child meets acute care hospital level of care when:

1. Skilled assessment and intervention multiple times during a 24-hour period, on a daily basis, is required to maintain stability and prevent deterioration including:

- Medical monitoring, assessment, and intensive medication administration for the medical condition;
- Monitoring changes in the child's condition that require prompt interventions to avert complications;
- Provision of physician-supervised, hands-on, comprehensive medical interventions and treatments;
- Modifications of treatment plans throughout the day based on the child's condition;
- The child requires comprehensive medical treatments and skilled services on a daily basis; AND

2. As a practical matter, the daily comprehensive medical services can be provided only on an inpatient basis in an acute care hospital setting; AND
3. The child requires acute care services that must be performed by, or under the supervision of, professional or technical personnel and directed by a physician that includes a treatment plan; AND
4. The treatment of the child's illness substantially interferes with the ability to engage in everyday age-appropriate activities of daily living at home and in the community, including but not limited to bathing, dressing, toileting, feeding, and walking/mobility; AND
5. 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
6. The child requires specialized professional training and monitoring beyond those ordinarily expected of parents; AND
7. The child's condition meets criteria for an inpatient level of care. Acute care hospital level of care must be furnished pursuant to a physician's orders and be reasonable and necessary for the treatment of an individual's illness or injury and must be consistent with the nature and severity of the child's illness or injury, their particular medical needs and accepted standards of medical practice.

Bureau for Medical Services Policy Manual 526.6 documents medical criteria for a Nursing Facility Level of Care:

#### 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, 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 a child's illness or injury (i.e., be consistent with the nature and severity of the individual's injury or illness, this 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

Code of Federal Regulations 42 CFR § 435.1010(a)2-6 provides that persons with related conditions means individuals who have a severe, chronic disability that meets all the following conditions.

(a) It is attributable to—

(1) Cerebral palsy or epilepsy; or

(2) Any other 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 mentally retarded persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care.

(2) Understanding and use of language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

Code of Federal Regulations 42 CFR § 440.10 documents:

(a) ***Inpatient hospital services*** means services that—

(1) Are ordinarily furnished in a hospital for the care and treatment of inpatients;

(2) Are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—

(i) Is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(ii) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

(iii) Meets the requirements for participation in Medicare as a hospital; and

(iv) Has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of [§ 482.30 of this chapter](#), unless a waiver has been granted by the Secretary.

(b) Inpatient hospital services do not include SNF and ICF services furnished by a hospital with a swing-bed approval.

Code of Federal Regulations CFR 42§ 440.150 documents:

(a) “ICF/IID services” means those items and services furnished in an intermediate care facility for Individuals with Intellectual Disabilities if the following conditions are met:

(1) The facility fully meets the requirements for a State license to provide services that are above the level of room and board;

(2) The primary purpose of the ICF/IID is to furnish health or rehabilitative services to persons with Intellectual Disability or persons with related conditions;

(3) The ICF/IID meets the standards specified in [subpart I of part 483 of this chapter](#).

(4) The beneficiary with Intellectual Disability for whom payment is requested is receiving active treatment, as specified in [§ 483.440 of this chapter](#).

(5) The ICF/IID has been certified to meet the requirements of [subpart C of part 442 of this chapter](#), as evidenced by a valid agreement between the Medicaid agency and the facility for furnishing ICF/IID services and making payments for these services under the plan.

(b) ICF/IID services may be furnished in a distinct part of a facility other than an ICF/IID if the distinct part—

(1) Meets all requirements for an ICF/IID, as specified in [subpart I of part 483 of this chapter](#);

(2) Is clearly an identifiable living unit, such as an entire ward, wing, floor or building;

(3) Consists of all beds and related services in the unit;

(4) Houses all beneficiaries for whom payment is being made for ICF/IID services; and

(5) Is approved in writing by the survey agency.

## **DISCUSSION**

The Children with Disabilities Community Services Program (CDCSP) is a West Virginia optional Medicaid program which allows a child with a severe disability who is eligible to receive the level of care provided in a medical institution, acute hospital or nursing facility, to receive medical assistance.

In March 2026, the Appellant, who was a recipient of the CDCSP, submitted an evaluation and

supporting documentation to determine her continued eligibility for the program. The Respondent denied the Appellant's application citing that the supporting documentation failed to demonstrate that her care required the level of services in either an acute care hospital, intermediate care facility or nursing facility. The Appellant's representative contests the denial. The Respondent must prove by a preponderance of the evidence that it correctly denied the Appellant's eligibility for the CDCSP.

The Appellant, a 16-year-old juvenile, presented a primary diagnosis of psychogenic non-epileptic episodes and anxiety, with a secondary diagnosis of conversion disorder. As part of her application the Appellant submitted a Level of Care Evaluation (Exhibit D-4) in which her physician recommended an acute care hospital.

Leanne Stone, Nurse Reviewer, reviewed the Appellant's application and supporting documentation for her continued eligibility for CDCSP. Ms. Stone testified that as part of her review, she evaluated the Appellant for both level of cares including acute care hospital and nursing facility. Ms. Stone compared the supporting documentation with the medical eligibility requirements outlined in Bureau for Medical Services Provider Manual 526.4.1 and 526.6.1. The physician noted in the Level of Care Evaluation that the Appellant was "coherent, goal-oriented, with relevant speech" and demonstrated "no motor abnormality". The physician noted the Appellant's need for psychiatric therapy but noted that "the client can be maintained in the home." Ms. Stone opined that the information presented in the Level of Care Evaluation demonstrated that the Appellant presented a stable condition. Ms. Stone indicated that all of the observations noted by the Appellant's physician in the supporting documentation failed to meet the medical eligibility criteria for consideration of both an acute care hospital and a nursing facility; thus, resulting in the denial of the Appellant's eligibility for CDCSP.

██████████ the Appellant's mother, testified that the Appellant has been diagnosed with a functioning neurological disorder and received CDCSP services since 2022. ██████████ testified that she submitted similar information in previous evaluations and was determined eligible but questioned the current denial. ██████████ agreed that her daughter's condition is stable, but indicated without her advocacy, the Appellant would ultimately require psychiatric hospitalization. ██████████ purported that she is currently employed as a licensed social worker and she provides the majority of care and specialized training for her daughter in the home. ██████████ averred that the Appellant needs the CDCSP to provide additional medical coverage.

Governing policy mandates that for a child to be eligible for CDCSP they must live at home with their biological or adoptive parents and have a program of community services developed by a health care provider. The level of services provided in the community must serve the child as well as or better than comparable services in a medical facility and must cost less than the same services delivered in a comparable medical facility. Specific eligibility requirements and targeted population for the CDCSP include, children, through the age of 18 who live with their adoptive or biological family, who have a disability that qualifies them to receive Supplemental Security Income (SSI) but who are denied SSI because their parents' income or assets exceeds Social Security Administration guidelines, whose care is provided in their home and community setting at the same level of quality and does not exceed the cost of care in a medical facility and whose care requires the level of services provided in either an acute hospital, intermediate care facility or

a nursing facility.

Based on an evidentiary review, the supporting documentation provided in the Appellant's application failed to demonstrate that the Appellant requires the level of services provided in either an acute care hospital or nursing facility. Because the Appellant failed to meet the medical eligibility requirements for CDCSP, the Respondent's decision to deny eligibility for the program is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that to be eligible for CDCSP a child must live at home with their biological or adoptive parents and have a program of community services developed by a health care provider.
- 2) The targeted population for CDCSP includes children, through the age of 18, who live with their adoptive or biological family, who have a disability that qualifies them to receive SSI but who are denied SSI because their parents' income or assets exceed SSA guidelines, whose care is provided in the home and community setting at the same level of quality and does not exceed the cost of care in a medical facility, and whose care requires the level of services provided in either an acute care hospital, intermediate care facility or nursing facility.
- 3) Policy defines an acute care hospital level of care as medical services or nursing services for a child who is at risk of hospitalization in an acute care hospital setting. Hospital level of care is appropriate for individuals who continuously require the type of care ordinarily provided in a hospital who without these services would require frequent hospitalizations.
- 4) Policy defines nursing facility level of care as skilled services that are needed on a daily basis that must be provided on an inpatient basis and ordered by and provided under the direction of a physician.
- 5) The Appellant is a 16-year-old juvenile with a psychiatric diagnoses of Psychogenic Non-Epileptic Episodes and Anxiety.
- 6) Supporting documentation outlined in the Level of Care Evaluation failed to demonstrate that the Appellant required the level of services provided in either an acute care hospital or nursing facility.
- 7) Because the Appellant failed to meet medical eligibility criteria, the Respondent's decision to deny eligibility is affirmed.

### **DECISION**

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

**ENTERED this \_\_\_\_ day of July 2026.**

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**Eric L. Phillips**  
**Certified State Hearing Officer**