



October 22, 2024

[REDACTED]

RE: [REDACTED] A JUVENILE v. WV DoHS/BMS
ACTION NO.: 24-BOR-3178

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 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,

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

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

cc: Stacy Broce, Bureau for Medical Services
Kerri Linton, Psychological Consultation and Assessment

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

██████████ A JUVENILE,

Appellant,

v.

Action Number: 24-BOR-3178

**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 juvenile. 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 October 9, 2024.

The matter before the Hearing Officer arises from the Respondent's July 9, 2024 decision to deny the Appellant's medical eligibility for the Medicaid Children with Disabilities Community Service Program (CDCSP).

At the hearing, the Respondent was represented by Charley Bowen, Psychological Consultation and Assessment (hereafter PC&A). Observing on behalf of the Respondent was Crystal Dotson, PC&A. The Appellant's mother, ██████████ appeared and represented the Appellant. Both representatives were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Chapter 526 excerpts
- D-2 Denial Notice, dated July 9, 2024
- D-3 CDCSP Information Sheet
Completed by ██████████ on June 26, 2024
- D-4 CDCSP Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation, completed on July 2, 2024 by Licensed Physician ██████████
- D-5 Unlocked Potential Psychological Services CDCSP Comprehensive Psychological Evaluation
Completed by ██████████ PsyD on May 6, 2024
- D-6 Social Security Administration (SSA) Notice of Disapproved Claim, dated June 11, 2024
- D-7 Cost Estimate Worksheet, dated June 26, 2024

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) On July 9, 2024, the Respondent issued a notice denying the Appellant’s CDCSP medical eligibility (Exhibit D-2).
- 2) The basis for the decision was listed on the notice as “Per policy an individual must have an eligible diagnosis and substantial deficits in at least three of six adaptive areas. The documentation provided for review only indicates substantial deficit in one adaptive area” (Exhibit D-2).
- 3) On July 2, 2024, licensed physician [REDACTED] signed the CDCSP ICF/IID Level of Care Evaluation, certifying that the Appellant has “Severe Autism Disorder” and that the Appellant’s “developmental disability, medical condition and/or related health needs are as documented above and he/she requires the level of care provided in an ICF/IID” (Exhibit D-4).
- 4) On May 6, 2024, [REDACTED] PsyD (hereafter [REDACTED]) completed a comprehensive psychological evaluation with the Appellant (Exhibit D-5).
- 5) [REDACTED] administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to the Appellant’s mother (Exhibit D-5).
- 6) The ABAS-3 results reflected a scaled score of 1 in *communication* (Exhibit D-5).
- 7) The ABAS-3 results reflected scaled scores of 5 through 9 in the other subdomains (Exhibit D-5).
- 8) [REDACTED] identified diagnoses of Autism Spectrum Disorder, Level 3 and Global Developmental Delay (Exhibit D-5).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 526.5 Medical Eligibility for ICF/IID Level of Care provides that 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 in an ICF/IID.

The child must meet the medical eligibility criteria in this section and in each of the following sections 5.2.6.5.2 and its subparts to be eligible for this program.

BMS Manual § 526.5.2 *Medical Necessity for ICF/IID Level of Care* provides that the medical necessity for ICF/IID level of care is determined by the evaluation of the child's diagnosis, functionality, and need for active treatment.

BMS Manual § 526.5.2.2 *Functionality for ICF/IID Level of Care* provides that to be eligible, the child must have 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

1. Self-care refers to 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 person from one place to another with or without mechanical aids.
5. Self-direction refers to the age of 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 ...

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:

- Attributable to any other conditions, 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 like that of mentally retarded persons, and requires treatment or services like those required for these persons,
- Manifested before the person reaches age 22,
- Is likely to continue indefinitely,
- Results in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care
 - Understanding and use of language
 - Learning
 - Mobility
 - Self-direction
 - Capacity for independent living

DISCUSSION

The Appellant submitted an initial application for Medicaid CDCSP benefit eligibility. The Respondent issued a notice advising the Appellant that CDCSP benefit eligibility was denied because the submitted documentation failed to demonstrate the presence of substantial adaptive deficits in three or more of the six major life areas. The Appellant's representative argued that the Appellant's diagnosis of Autism, Level 3, and the submitted documentation demonstrate the presence of substantial functioning deficits.

The Board of Review cannot make changes or provide exceptions to the eligibility criteria established by the policy and can only determine whether the Respondent denied the Appellant's CDCSP medical eligibility according to the policy criteria. The Respondent had to prove by a preponderance of the evidence that the submitted documentation failed to establish the presence of substantial adaptive deficits in at least three functioning areas at the time of the Respondent's denial.

The presence of substantial deficits must be supported by relevant test scores and narrative descriptions contained in the submitted documentation. The provided records and testimony revealed that the Appellant had a deficit in *communication* at the time of the Respondent's denial, as corroborated by relevant test scores and narrative descriptions. The Respondent's representative testified that substantial adaptive deficits are consistent with scaled scores of 1 or 2 on the ABAS-3 testing measure.

During the hearing, the Appellant's representative argued that medical eligibility is necessary to align the services required to care for the Appellant. While the Appellant's representative testified to the Appellant's functioning limitations, substantial delays must be established by relevant test scores and narrative. The ABAS-3 results failed to establish the presence of qualifying scaled scores in other areas. As qualifying test scores were not presented, additional deficits could not be affirmed in other areas.

CONCLUSIONS OF LAW

- 1) To be medically eligible for CDCSP, the submitted documentation must establish the presence of substantial adaptive deficits in at least three functioning areas, as evidenced by relevant test scores and narrative, at the time of the Respondent's denial of the Appellant's medical eligibility.
- 2) The preponderance of evidence supported the presence of a substantial adaptive deficit in one functioning area at the time of the Respondent's denial of the Appellant's medical eligibility.
- 3) The Respondent correctly denied the Appellant's CDCSP medical eligibility because the submitted documentation failed to establish the presence of substantial adaptive deficits in at least three functioning 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 Medicaid CDCSP.

ENTERED this 21st day of October 2024.

Tara B. Thompson, MLS
State Hearing Officer