



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin  
Governor

Martha Yeager Walker  
Secretary

May 24, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your daughter's hearing held May 5, 2005. Your Hearing request was based on the Department of Health and Human Resources' action to deny your application for Children with Disabilities Community Services Program (CDCSP) benefits.

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.

The Children with Disabilities Community Service Program provides medical services for disabled children who would otherwise be at risk of institutionalization so that they may reside in their family homes. Eligibility and benefit levels for the CDCSP Program are determined based on current regulations. One of these regulations specifies that in order to be eligible, the client must have substantial limits of functioning in three or more of the major life areas and require the level of care provided in a medical institution.

The information which was submitted at the hearing revealed that your daughter's limitations are not at the substantial level required for the program and she is not at a risk of institutionalization.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in their denial of services under the CDCSP Program.

Sincerely,

Sharon Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Susan Striar May, BMS  
Chairman, BOR

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

\_\_\_\_\_ by \_\_\_\_\_

**Claimant,**

v.

**Action Number:** \_\_\_\_\_

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 5, 2005 for \_\_\_\_\_. It should be noted that this CDCSP hearing was held in conjunction with a hearing for a denial of MR/DD waiver services.

This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on May 5, 2005 on a timely appeal filed January 19, 2005.

It should be noted here that the claimant=s application for the CDCSP Program has been denied. All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled Children with Disabilities Community Service Program (CDCSP) is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The Children with Disabilities Community Service Program provides medical services for disabled children who would otherwise be at risk of institutionalization so that they may reside in their family homes. The medical services must be more cost effective for the State than placement in a medical institution such as a nursing home, ICF/MR facility, acute care hospital or approved Medicaid psychiatric facility for children under the age of 21.

**III. PARTICIPANTS**

\_\_\_\_\_, claimant's mother

\_\_\_\_\_, claimant's father

Terry Gruber, Rock Oak MRDD Educational Services

Molly Ravenscroft, Potomac Highlands Guild

Susan Striar May, Bureau of Medical Services

Presiding at the hearing was Sharon Yoho, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION(S) TO BE DECIDED**

The question to be decided is whether it has been established that the claimant meets the medical eligibility criteria for the CDCSP Program

**V. APPLICABLE POLICY**

Bureau of Medical Services Program Eligibility Criteria

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

Departments= Exhibits:

D-1 CDCSP Medical Eligibility Criteria, pages 8 and 9

D-2 WV University Health Associates letter dated February 3, 2004

D-3 WV Birth To Three Communication Evaluation dated January 27, 2005

D-4 Physical Therapy Evaluation dated September 02, 2004

D-5 School Psychologist Assessment report dated September 14, 2004

D-6 Assessment by Rock Oak MR/DD Education Services

D-7 Comprehensive Psychological Evaluation dated September 29, 2004

D-8 Annual Medical Evaluation for CDCSP dated August 15, 2004

**VII. FINDINGS OF FACT:**

1. \_\_\_\_\_ is a 17 month old female who, resides with her family. Her age at the time of the application for CDCSP services was approximately 09 months. \_\_\_\_\_ is diagnosed with Down syndrome.

2. \_\_\_\_\_ has an Axis I. diagnosis of Pervasive Developmental Disorder NOS, an Axis II diagnosis of Mental Retardation with Severity Unspecified, an Axis III diagnosis of Trisomy 21/Down syndrome, and an Axis IV diagnosis of Psychosocial Stressors. A Comprehensive Psychological Evaluation completed on September 29, 2004 by Psychologist, Sheri Coleman and Kathy Murphy makes a recommendation that this claimant remain in the home of her parents and continue services through the Birth through 3 Program. It further identifies her diagnosis as a qualifying diagnosis for the MR/DD program and suggests that services through the Community Based Waiver program would be helpful in her training and aid in the prevention of institutionalization. The evaluation also states that \_\_\_\_\_, “has an excellent prognosis for developing the needed adaptive skills”.

3. Test results reported on the September 2004 Psychological were derived from the Bayley Scales of Infant Development, 2<sup>nd</sup> Edition, and also from the Vineland Adaptive Behavior Scales instrument. At age 09 months, the results from these test are as follows:

Bayley Scales of Infant Development:

Intellectual/Cognitive scores,

Mental scale is age equivalent of 5 months

Motor scale is age equivalent of 3 months

Vineland Adaptive Behavior Scales:

Adaptive Behavior,

Communication domain - age equivalent of 5 months

Daily living skills domain - age equivalent of 9 months

Socialization domain age - age equivalent of 1 year 3 months

Motor skill domain - age equivalent of less than 1 month

It is noted that these scores will continue to change as \_\_\_\_\_ ages and will further delineate from the mean. In the results of both testing instruments it is noted that Motor skills are showing substantial delays at this early age. All other scores are recorded to be above the half way mark of her chronological age at the time of testing.

4. A Physical Therapy Evaluation completed by Physical Therapist, Jenny Vought, on September 02, 2004, reports that \_\_\_\_\_ is functioning at the four to six month level with scattering up to five to seven months with her gross motor skills. \_\_\_\_\_’s age at this date was 9 months. The report indicates that \_\_\_\_\_ is willing to work to get what she wants and that she does not passively sit by and watch things happen. The evaluation indicates that \_\_\_\_\_ would benefit from physical therapy services to improve her functional mobility.

5. An Assessment Report completed by School Psychologist, Sandra Johnson, on September 14, 2004 summaries that \_\_\_\_\_’s motor development would appear to be a major impediment.



6. Rock Oak MR/DD Educational Services produced a report of an assessment completed by Solveig Gruber M.A. Ed, Developmental Specialist. This assessment was completed using the Battelle Developmental Inventory, parent interview and observation. Results from this assessment completed when \_\_\_\_\_ was 09 months old places \_\_\_\_\_ as follows:
  - Personal Social - 5 months
  - Receptive Communication Domain - 8 months
  - Expressive Communication Domain - 4-5 months
  - Cognitive Domain - 5 months
  - Adaptive Domain - 3 months
  - Gross Motor Domain - 3 months
  - Fine Motor Domain - 3 months.
7. An Annual Medical Evaluation completed on August 13, 2004 reports that the patient is alert and needs close supervision. All other areas to identify problems which require special care remained not checked with only the notation of “infant” included. This physician did make note that the patient is expected to have developmental delay and mental impairments.
8. \_\_\_\_\_ is reported to be able to sit with support. She cries when she is hungry. She grasps and retains objects. She is eating some table food from a spoon. She can stand while holding on to an adult for support. She has not yet mastered getting herself up into a sitting position, but is close to obtaining this skill.

### **VIII. CONCLUSIONS OF LAW:**

1. W V Dept. of Health & Human Resources Policy Manual, Eligibility Guide - Children With Disabilities Community Services Program:

Medical eligibility will be determined by the Office of Medical Services (OMS), Long Term and Alternative Care Unit.

Medical eligibility will be based on:

- A. The applicant must be a child who is up to, but not including, age 18. At the time of application, the child must require the level of care provided in a Nursing Facility (NF) or an Intermediate Care Facility for individuals with Mental Retardation and/or Related Conditions (ICF/MR) or an acute care hospital or an approved Medicaid in-patient psychiatric facility for children under the age of 21.

Level of Care determinations are made from a medical evaluation (Form DD-2A CDCSP)

for applicants requiring NF or hospital level of care. For an applicant requiring ICF/MR or psychiatric facility level of care, the medical determination is made from a medical evaluation (Form DD-2A CDCSP completed within the previous ninety days) and current psychological and/or psychiatric evaluations (completed within the previous six months for an initial application and within ninety days for a redetermination) appropriate to the applicant's age group. The evaluations must demonstrate that a child has a diagnosis of a severe, chronic disability which is:

- Attributable to a mental or physical developmental impairment, or a combination of mental and physical developmental impairments for a child requiring an ICF/MR Level of Care or
- Attributable to a physical impairment and/or medical condition for individuals requiring a NF or hospital Level of Care or;
- Attributable to a psychological and/or psychiatric impairment and requiring in- patient acute care psychiatric services for individuals requiring a psychiatric facility Level of care;

B. Likely to continue indefinitely;

C. Substantially limits functions in three or more of the following areas of major life activities:

- a. Self Care
- b. Receptive or Expressive Language
- c. Learning
- d. Mobility
- e. Self- Direction
- f. Capacity For Independent Living
- g. Economic Self-Sufficiency

The applicant must have a need for one of the medical facility levels of care described in I. A. and the corresponding services for an extended duration.

## **IX. DECISION:**

Although there is evidence that this child has developmental delays, substantial limits in functioning in three or more of the major life activities was not identified. Tests results, progress reports and testimony do not support a finding of three areas of substantial





limitation in functioning. At the young age of 09 months, \_\_\_\_\_ was not showing a functioning level which is substantially lower than others of the same age. She is showing the most significant delay in her motor skills. Other skills are showing signs of delay but have not proven to be substantial in nature. \_\_\_\_\_ did not at the time of application have substantial limited functioning in three (3) or more of the major life areas. This claimant's limitations were not severe enough to require the level of care offered in a medical facility.

It is the finding of the Hearing Officer that \_\_\_\_\_ did not meet the medical eligibility criteria for the CDCSP program for the application which was processed in December 2004. It is the ruling of this hearing officer that the action to deny these benefits was justified and such action is **upheld**

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 24 Day of May, 2005**

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**State Hearing Officer**