

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

HARRY BRIDGE and)	
MICHELLE BRIDGE,)	
)	
)	
v.)	C.A. No. 04A-06-001-JEB
)	
DEPARTMENT OF HEALTH & SOCIAL)	
SERVICES,)	
DIVISION OF SOCIAL SERVICES,)	
)	
Defendant.)	

Submitted: November 23, 2004
Decided: February 11, 2005

*Appeal from a Decision of the Department of Health & Social Services.
Decision Affirmed.*

OPINION

Appearances:

Harry Bridge and Michelle Bridge, *pro se*.

A. Ann Woolfolk, Esquire, Wilmington, Delaware.
Deputy Attorney General.

JOHN E. BABIARZ, JR., JUDGE.

This is the Court’s decision on an appeal from a decision of the Division of Social Services, Department of Health and Social Services (hereinafter referred to as “DSS”). In its decision, DSS terminated the participation of Harry Bridge, a minor, in the Children’s Community Alternative Disability Program (CCADP). Harry Bridge’s parents appealed the termination on his behalf. For the reasons explained below, the decision of DSS is affirmed.

POSTURE

Appellant Harry Bridges (“the child”) was approved for CCADP Medicaid benefits in 2000 and received them until October 2003, when DSS found that he no longer qualified for such benefits. A fair hearing was held in March 2004, and a DSS hearing officer issued a final decision concluding that Appellant is ineligible for Medicaid coverage. Appellant filed a timely appeal to this Court. Briefing is complete and the issues are ripe for decision.

DISCUSSION

On appeal, the Bridges argue that the record does not support the hearing officer’s finding that the child’s condition had improved sufficiently to justify terminating his Medicaid benefits. The Bridges also argue that the proceedings at the hearing were clouded by a doctor’s statement that the child should not have received Medicaid benefits in the first instance. In response, DSS argues that there is

substantial evidence to support the finding that the child fails to meet the requisite level of care needed to qualify for participation in CCADP. DSS also argues that there is substantial evidence to show a change in circumstances from the child's acceptance into the Medicaid program in 2000 to the termination in 2003.

This Court's role in reviewing a decision of the Division of Social Services is clear. The Delaware Social Services Manual ("DSSM") provides that a decision of a DSS hearing officer is a final decision. That decision is subject to judicial review pursuant to DEL. CODE ANN. tit. 31, ¶ 20, which provides that the Superior Court "shall sustain any factual findings of the administrative hearing decision that are supported by substantial evidence on the record as a whole." The Court must also determine whether the decision is free from legal error.¹

Prior to the discussion of the issues presented in this case, some explanation of the interplay between state and federal authorities in implementing Medicaid benefits is helpful. DSS operates the Medicaid Program under Title XIX of the federal Social Security Act and under the authority derived from DEL. CODE ANN. tit. 31, ¶ 502(5), ¶ 503(b) and ¶ 505(3). The Medicaid Program provides for services to defined groups of individuals and families and is financed with both State and federal

¹*Bowden v. Delaware Dep't of Health and Social Services, Div. of Social Services*, 1993 WL 390480 at *2 (Del. Super.).

funds. Children qualifying for benefits must meet, income, resource and status eligibility tests.

The Children's Community Alternative Disability Program (CCADP) is a Delaware Medicaid option that is designed to serve children with significant disabilities. Such children would otherwise qualify to be cared for in an institutional setting. Delaware Medicaid is implemented by the federal rule at 42 C.F.R. 435.225. Eligibility is contingent on a finding that non-institutional care is appropriate and services are available. This determination is made by a Medicaid Review Team (MRT).

In this case, the child's mother, Shelley Bridge, applied for Medicaid Assistance benefits for her son in 2000 when he was four years old. DSS found that the child was eligible for participation in CCADP. In April 2003, DSS determined that an eligibility review was appropriate and sent a notice of the review to Appellant's mother, along with a request for the pertinent medical information. Following review of the required information, the DSS MRT determined that Harry did not meet the qualifying standards set forth in DSSM § 25100 and was therefore no longer eligible for CCADP benefits. Specifically, the MRT found the child did not meet the following criterion:

The child's profile is consistent with the level of care of a hospital,

skilled nursing facility (SNF), intermediate care facility (ICF), intermediate care facility for mental retardation (ICF/MR), or intermediate care facility for mental disease (ICF/IMD).

The hearing officer found that the testimony and evidence showed that the child needs medical care and physical therapy as well as drug and airways therapies. However, the record also shows that the child leads a relatively normal life for a seven-year-old, and does not require the level of care to be found in an acute hospital setting, a Skilled Nursing Facility, and Intermediate Care Facility, as required under DSSM ¶ 25100.

The record supports this conclusion. At the time of the hearing, the child presented as an active, healthy child who needed medical attention but maintained a normal lifestyle at home and in a regular classroom at Mount Pleasant Elementary School. It is undisputed that the child suffered from hypotonicity, asthma, constipation, and possible but undiagnosed Ehlers Danlos Syndrome. However, the evidence provided by health care providers and school officials shows that the child leads a normal life and needs no assistance with daily physical activities such as eating, dressing, moving and communicating. He attends school, is a member of the Cub Scouts, sings in the church choir and plays with other children. He does not use special medical devices or equipment.

The child's doctor, who has treated him since birth, described his mental state as normal for his age and views his prognosis as good with physical therapy, consisting of strenuous exercise, to maximize his physical tolerance and abilities. The doctor recommended that he participate in all activities without limitation. The child's medications are administered at home by his parents. He takes medication for his asthma for his asthma, allergies and constipation, and also uses nasal and pulmonary inhalers.

Evidence provided by the school shows that the child does not require services other than a monthly check-up by a physical therapist and occasional assistance when his sick to his stomach or his asthma manifests itself. Documentation provided by the school's physical therapist shows that the child's muscle strength and range of motion are normal and that he can and should participate in swimming programs, as well as regular outdoor playing, jumping, swinging, and running. The therapist anticipated that the child would succeed with a full academic schedule. School records show that the child has visited the school nurse for stomach aches, mild abrasions and being teased by classmates. The school nurse and gym teacher assist the child in managing his asthma, but he requires no specific accommodation at school.

There is no dispute that the child needs medical care, but the record evidence supports the hearing officer's finding that the child does not require the level of care

he would receive in an institution. The hearing officer thoroughly reviewed the documentary and testimonial evidence and appropriately concluded that the child does not meet the criteria for receipt of Medicaid benefits.

The evidence also supports the finding that the child's condition has improved since 2000 when he was initially found to be eligible for Medicaid benefits. He now attends a regular classroom and participates in all available exercise programs. His treating physician reported that his overall condition was improving, and his mother noted improvement in his gross motor skills. One of his physicians wrote that he had not seen the child in several years and was impressed with his growth, his cognitive development and his improved strength. The Court concludes that the record supports a finding that the child has experienced a change in circumstances or other good cause, as is required for a termination of Medicaid benefits.²

The Bridges also argue that the proceedings were tainted because the topic of the child's initial eligibility for benefits was raised. However, the Court notes that the hearing officer correctly focused on the child's current status, although it was noted that the initial determination was made without having been reviewed by a DSS medical director. This observation does not taint or otherwise diminish the hearing officer's findings.

²*Collins v. Eichler*, 1991 WL 53447 (Del. Super.).

CONCLUSION

The hearing officer's conclusion that the child's medical condition is not consistent with a qualifying level of care is supported by the record evidence and is free from legal error. The decision to terminate the child's Medicaid benefits under the Children' community alternative Disability Program is therefore *Affirmed*.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,Jr./bjw
Original to Prothonotary