STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-15204 CMH
Case No. [redacted]
Load No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a telephonic hearing was held on [redacted]. [redacted] represented the [redacted] (CMHSP or Department). Also appearing on behalf of the Department was [redacted]. The Appellant was represented by his hearing representative, [redacted] His father, [redacted] was also present.

ISSUE

Does the Appellant meet the MDCH/CMHSP Managed Specialty Supports and Services Contract Medicaid service eligibility requirements for services as a Developmentally Disabled person?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a [redacted]-year old Medicaid beneficiary. He sustained a closed head injury at age [redacted]

2. The Appellant seeks services from the [redacted] Authority, asserting disability resultant from the head trauma.

3. The Appellant was assessed on or about [redacted], following his request for medication review services. The CMHSP determined he did not qualify for services as a developmentally disabled person. It was further determined he did not qualify for services as a severely and persistently mentally ill person.

4. On [redacted], the CMHSP provided notice to the Appellant he was not eligible for services.

5. A hearing was requested on [redacted].

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

> Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.
>
> *42 CFR 430.0*

> The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.
>
> *42 CFR 430.10*

Section 1915(b) of the Social Security Act provides:

> The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State…

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations.

Michigan's Medicaid Prepaid Specialty Mental Health and Substance Abuse Services combination 1915(b)/(c) Medicaid Prepaid Specialty Services and Supports for Persons with Developmental Disabilities programs, was initially approved in 1998. The Michigan program "carves out" specialty mental health, substance abuse and developmental disabilities services and supports and provides these services using a prepaid shared risk design. The Department of Community Health provides a wide array of services to a variety of target populations through the use of Medicaid funded waiver programs. Section 1915 of the Social Security act allows the Department to provide specialized services to targeted waiver service populations.

Each waiver program has differing service eligibility requirements. [redacted] contracts with the Department to provide services through the State Medicaid Plan and Medicaid Prepaid Specialty Mental Health waiver. Clients are eligible for services under the 1915(b) specialty supports and services waiver if they are Medicaid eligible and meet the Community Mental Health services eligibility requirements.

Medicaid beneficiaries are only entitled to medically necessary, Medicaid covered services. This service must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.* Community Mental Health Specialty Programs (CMHSPs) are required to use a person-centered planning process to identify medically necessary services and how those needs will be met. The person-centered planning process is designed to provide beneficiaries with a "person centered" assessment and planning in order to provide a broad, flexible set of supports and services. Medically necessary services are generally those identified in the Appellant's person-centered plan.

This administrative authority has jurisdiction to hear matters related to a denial, reduction, termination, or suspension of a Medicaid covered service. *See 42 CFR 431.200 et seq.* The CMH concluded in [redacted] and then again in [redacted] that the Appellant did not meet the requirements for CMH 1915(b) specialty supports and services. The denial of a Medicaid-covered service gave rise to the Appellant's fair hearing rights and his appeal of [redacted] actions.

The Appellant may be eligible for [redacted] 1915(b) specialty supports and services if he has a developmental disability. [redacted] is required to provide services to all developmentally disabled Medicaid beneficiaries who meet Contract service eligibility criteria and reside in its service area.

The Appellant argues that he is eligible for 1915(b) specialty supports and services through CMH because he is a developmentally disabled person. CMH concluded the Appellant is not developmentally disabled and is therefore ineligible for [redacted] 1915(b) specialty supports and services.

The CMH Specialty Services Contract provides that a developmental disability is defined as follows. These requirements are duplicated in Michigan's Mental Health Code.

> (20) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

(ii) Is manifested before the individual is 22 years old. (Emphasis added)

(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(A) Self-care.
(B) Receptive and expressive language.
(C) Learning.
(D) Mobility.
(E) Self-direction.
(F) Capacity for independent living.
(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a (20); Managed Specialty Supports and Services Contract

Medicaid beneficiaries are eligible for CMHSP services provided through the Managed Specialty Mental Health Service waiver if they meet the service eligibility criteria outlined in the MDCH/ CMHSP Managed Specialty Supports and Services Contract (Contract). Mental Health Services criteria are provided in Contract Attachment 4.5, 4.1. The Contract incorporates by reference the Mental Health service eligibility criteria found in MSA Bulletin 95-03.

Service eligibility criteria for Developmental Disability services are provided in Attachment 3.3.1. The Contract incorporates by reference the Mental Health Code definition of Development Disability, MCL 330.1100a(20), as the service eligibility criteria for the Developmentally Disabled.

The Appellant must meet all Contract service eligibility criteria for specific Mental Health or Developmental Disability services to be eligible for services through [redacted].

This ALJ must determine whether or not the Appellant's current status is attributable to a mental or physical impairment, or a combination of mental and physical impairments, that manifested themselves before he turned [redacted] years of age.

The preponderance of the evidence presented clearly indicates the answer to the above question is no. It is uncontested the Appellant suffered the head trauma that resulted in his current medical status at age [redacted] in a car accident. There is no assertion or evidence in the record to support a finding that he was developmentally disabled prior to age [redacted]

The Appellant essentially argues it is unfair to deny him services because he needs them. Unfortunately, need is not the determinative eligibility factor. This ALJ must follow the policy as stated above and the CMHSP is required to serve only those who meet the qualifying criteria. There is no assertion he qualifies as a severely and persistently mentally ill person. There is no evidence of record he meets the qualifying criteria. The CMH is required to use the criteria outlined above as a foundation for determining whether an individual is eligible for Medicaid-funded developmental disability services. Furthermore, this body has not been granted equitable jurisdiction, but is charged, by federal mandate, to apply current policy, whether fair, unfair, or otherwise.

Based upon the evidence presented, I must find that the CMH properly concluded, based on the uncontested evidence, that the Appellant does not meet the *MDCH/CMHSP Medicaid Managed Specialty Supports and Services Contract 1915(b)(c) Waiver Program FY 07-08* service eligibility requirements for Medicaid-funded developmental disability services through [redacted]

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find that [redacted], and therefore, the Department, properly denied services to the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

[redacted]
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Date Mailed: _____5/15/2009__

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.