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. 2009-16631 CMH
Case No. [redacted]

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. [redacted], appeared as Authorized Representative for [redacted] (Appellant) who also appeared. Also appearing as a witness for the Appellant was [redacted].

[redacted] appeared on behalf of [redacted], an agency contracted with the Michigan Department of Community Health to provide Medicaid-funded mental health specialty supports and services.

ISSUE

Does the Appellant meet service eligibility requirements as an adult with a serious mental illness?

FINDINGS OF FACT

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

1. The Appellant is an adult Medicaid beneficiary. He has diagnoses of Adjustment Disorder and has been a part of the foster care system since [redacted]. *(Exhibit 1, p.11)*

2. On [redacted], [redacted], an agency contracted with [redacted], conducted an Adult Diagnostic Assessment for purposes of determining the Appellant's eligibility for Medicaid-funded mental health specialty supports and services.

3. The [redacted], Assessment reveals the Appellant has a good relationship with his foster parents, that he has good communication skills, that he is capable of building and repairing things, that he has friends and easily makes new friends, that he plays basketball, football, listens to music, watches television, that he takes no medications, and that he is currently attending, and doing well in school. The Assessment also reveals that he minimizes behavioral issues, that he has harmed the family pet, and that he could benefit from outpatient therapy to address mood stabilization and reduction of oppositional behavior. *(Exhibit 1; pp. 2-11; Attachment A)*

4. The [redacted], Assessment further reveals no current legal problems, no criminal convictions, incarcerations or civil proceedings, and that he had to repeat the 9th grade three times. It also reveals no marked limitations on functional abilities related to activities of daily living. *(Exhibit 1; pp. 2-11; Attachment A)*

5. [redacted] issued the Appellant an Adequate Action Notice informing him that he was ineligible for Medicaid-funded mental health specialty supports and services.

6. On [redacted], [redacted] filed a Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on behalf of the Appellant.

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…

As applied to adult beneficiaries, NBHS utilizes the criteria outlined in the *MDCH/CMHSP Medicaid Managed Specialty Supports and Services Contract 1915(b)/(c) Waiver Program FY 03-04: Attachment P 3.3.1-and Attachment P 3.3.2., 10/01/02 revision;* (Contract).

Severe and Persistent Mental Illness is defined in the Contract as:

> 1. Diagnoses as defined by Diagnostic and Statistical Manual-IV Version (DSM-IV)- Schizophrenia and Other Psychotic Disorder (295.xx; 297.1; 297.3: 298.8: 298.9), Mood Disorders, or Major Depressions and Bipolar Disorders 296.xx).
>
> 2. Degree of Disability-Substantial disability/ functional impairment in three or more primary aspects of daily living such that self-sufficiency is markedly reduced. This includes:
>
> Personal hygiene and self-care,
> Self-direction,
> Activities of daily living,
> Learning and recreation, or
> Social transactions and interpersonal relationships.
>
> In older persons (55 or older), loss of functional capacity might also include:
>
> Loss of mobility.
> Sensory impairment,
> Physical stamina to perform activities of daily living or ability to communicate immediate needs as the result of medical conditions requiring professional supervision, or
> conditions resulting from long-term institutionalization.

Duration-

a) evidence of six continuous months of illness, symptomatology, or dysfunction, or six cumulative months of symptomatology/dysfunction in a 12-month period, or

b) based on current conditions and diagnosis , there is a reasonable expectation that the symptoms/dysfunctions will continue for more than six months.

Prior Service Utilization-

a) four or more admissions to a community inpatient unit/facility in a calendar year, or
b) community inpatient hospital days of care in a calendar year exceeding 30 days, or
c) State hospital utilization of over 60 days in a calendar year, or
d) Utilization of over 20 mental health visits (e.g., individual or group therapy) in a calendar year.

Medicaid Managed Specialty Supports and Services Concurrent 1915(b)/(c) Waiver Program FY 03-04: ATTACHMENT P 3.3.1 – 10/01/02 Final MA 39

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

The Michigan Supreme Court defines proof, by a preponderance of the evidence, as requiring that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be

afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

Does the Appellant meet criteria for an adult with a severe and persistent mental illness?

The Appellant is diagnosed with Adjustment Disorder. Adjustment Disorder is not one of the enumerated qualifying diagnoses that would otherwise establish eligibility at this stage of review for Medicaid-funded mental health specialty supports and services. As such, an analysis regarding duration and intensity of disability is unnecessary.

The Appellant's representative testified he is "falling through the cracks" of the system, and that if he does not receive therapy, his future will be negatively affected. She failed to address, however, the specific reasons why therapy, as provided for by the Appellant's mental health benefit under straight Medicaid, would not suffice to address the Appellant's ongoing issues. The Appellant's representative also failed to provide the record with any evidence of a mental health diagnosis that would render him eligible for the services requested.

DECISION AND ORDER

Based upon a preponderance of the objective evidence presented, I decide that [redacted] has properly concluded the Appellant does not satisfy the *MDCH/CMHSP Medicaid Managed Specialty Supports and Services Contract 1915(b)(c) Waiver Program FY 03-04* service eligibility requirements for a person with a severe and persistent mental illness.

IT IS THEREFORE ORDERED that:

[redacted]'s decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 6/23/2009

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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.