

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF

**[REDACTED],
Appellant**
_____ /

Docket No. 2009-17382 CMH
Case No. [REDACTED]
Load [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 hearing was held on [REDACTED] [REDACTED] appeared on behalf of the Appellant. [REDACTED] represented the Department. Also in attendance were; [REDACTED]
[REDACTED]

ISSUE

Does the Appellant meet service eligibility requirements for the Bay Arenac Behavioral Health Authority [REDACTED] as an adult with a developmental disability or a serious and persistent mental illness?

FINDINGS OF FACT

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

1. The Appellant is a [REDACTED] adult spend down Medicaid, Medicare and SSI beneficiary. (Appellant's Exhibit #1)
2. He has a diagnosis of Cerebral Palsy, a history of depression by report and a history of Intermittent Explosive Disorder [with stable symptoms], CTS, history of learning disability, chronic low back pain, gastric reflux and colitis. (Exhibit A, p. 11, 12, (sub H) at page 36)

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3. The Appellant has made multiple applications for services through the [REDACTED] for a sheltered workshop program via his stated belief that he is a person with a developmental disability. (See Testimony and Department's Exhibit A – throughout)
4. Following Access Alliance review on [REDACTED] and a second opinion psychological evaluation on [REDACTED], by [REDACTED], the Appellant was again determined to not be a person with a developmental disability. (Exhibit A, pp. 7 (sub U) at pages 74-78)
5. The Appellant's representative alleged that the Appellant's hands shake "real bad" although at hearing the Appellant demonstrated no such tremors. (See Testimony)
6. [REDACTED], on in person evaluation, written report and testimony found no Serious Persistent Mental Illness (SPMI) in the Appellant, but rather the stated desire for a case manager as a prophylactic mental health precaution. The Appellant presented no MI symptoms or mood disturbances. (Exhibit B – throughout)
7. On [REDACTED], the Appellant filed his petition for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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, ██████████, as a Pre-paid Inpatient Health Plan (PIHP) utilizes the criteria outlined in the Medicaid Managed Specialty Supports and Services Concurrent Waiver Program Contract FY 09 for the Michigan Department of Community Health (MDCH).

The Contract sets for the following requirements for the PIHP in its servicing of potential clients:

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

Serious Mental Illness: As described in [] the Michigan Mental Health Code, a serious mental illness is a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American Psychiatric Association and approved by the MDCH and that has resulted in functional impairment that substantially interferes with or limits one or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbances, but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders are included

only if they occur in conjunction with another diagnosable serious mental illness:

1. A substance use disorder
2. A developmental disorder
3. A "V" code in the diagnostic and statistical manual of mental disorders.¹

[See MCL 330.1100d3]

Developmental Disability is defined in the Contract as:

Developmental Disability: As described in [] the Michigan Mental Health Code, a developmental disability means either of the following:²

1. If applied to an individual older than five years, a severe, chronic condition that meets all of the following requirements.
 - a) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - b) Is manifested before the individual is 22 years old.
 - c) Is likely to continue indefinitely.
 - d) Results in substantial functional limitations in three or more of the following areas of major life activities:
 - 1) Self-care;
 - 2) Receptive and expressive language;
 - 3) Learning, mobility;
 - 4) Self-direction;
 - 5) Capacity for independent living;
 - 6) Economic self-sufficiency.
 - e) 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.
2. If applied to a minor from birth to age five, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in item 1 if services are not provided. [See MCL 330.1100a(21)]

¹ The Contract reference to the Michigan Mental Health Code now appears at MCL.1100d3 and is substantially similar to the version referenced here.

² The Contract reference to the Michigan Mental Health Code now appears at MCL 1100a(21) and is substantially similar to the version referenced here.

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The testimony and the evidence presented at hearing firmly established that the Appellant, at ██████████ is not a person afflicted with a SPMI – nor is he developmentally disabled - by definition.

On separate evaluations psychologists ██████████ found no developmental disability in the Appellant. See Exhibit A and Exhibit B.

Both mental health professionals documented that the Appellant's cognitive functioning is within the low normal range. The Appellant's own comments showed the orderly and largely satisfactory management of his life events to date. While his representative asserts that the Appellant's diagnosis of cerebral palsy is tantamount to developmental disability – there is no evidence in the record to support that statement.

The prescription pad note from ██████████ (neurologist) makes no such claim – although he plainly states that the Appellant has CP and a physical disability – no link is referenced to developmental delay and there is no suggestion on lack of capacity. See Appellant's Exhibit #2.

The record lacks evidence to suggest the Appellant's physical abilities result in marked reduction of self-sufficiency or capacity for independent living. He treats with a neurologist (██████████) for symptoms of carpal tunnel syndrome and chronic low back pain. Exhibit A (sub H) pp. 33-40. However, the Appellant's behavior on history, on recent examination and at hearing have demonstrated great resourcefulness and high level functioning such that he would not likely not qualify for case management services even if he were to meet DD or SPMI criteria.³

³ See Exhibit A (sub O) pp. 62-63. See also the conclusions of ██████████ at Exhibit A (sub U) p. 78:
Conclusions/Recommendations

1) The purpose of this evaluation was to determine with James is an adult with a developmental disability. ██████████ is an individual with Cerebral Palsy and developmentally based mental disorders, including Learning Disorder, NOS, specific learning disorders in both Written Expression and Mathematics. Thus, he does meet the initial requirement for a developmental disability determination. He has both a Physical Impairment and Mental Impairments. Cerebral Palsy was present at birth and James' learning deficits were present when he was a young child, long before he reached the age of 22.

According to Michigan's Mental Health Code, the determination of a Developmental Disability heavily relies on deficits and limitations in adaptive behavior development. In regards to statistically significant adaptive deficits, this was present in only one out of nine domains measured, and this domain was Leisure.

In addition, there must be substantial functional limitations in three out of seven major areas of life activity, including Self-Care, Expressive or Receptive Language, Learning, Mobility, Self-Direction, Capacity for Independent Living, and Economic Self-Sufficiency.

It is my opinion that ██████████ has functional limitations in only two of these major areas of life activity. These two areas are Learning (based on his learning disorders) and Economic Self-Sufficiency. He has functional limitation in Economic Self-Sufficiency, in my opinion, because his Cerebral Palsy and Learning Disorders place significant limitations on the type of employment he is able to accept.

2) Based on these results, I am unable to conclude that ██████████ is an adult with a developmental disability.

3) It is likely that ██████████ diagnoses would allow him to receive services from Michigan Rehabilitation Services. Thus he could seek vocational training and employment with the assistance of this agency. (Emphasis supplied)

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To the extent the Appellant suffers a disability under some other rubric of the law the evidence here suggests that the Appellant's physical abilities are limited by chronic back pain and mild CTS - not by his mental health.

In his most recent evaluation the Appellant demonstrated euthymic mood, good posture and ADL independence. See Exhibit B – throughout.

The overwhelming evidence today supports the Department's position that the Appellant is not an individual subject to DD or SPMI. The Appellant has failed to preponderate his burden of proof that he met eligibility requirements for [REDACTED] program services as an individual with a developmental disability – either by definition or as one afflicted with CP.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant specialty mental health services for lack of eligibility as a person without a developmental disability or a severe and persistent mental illness.

IT IS THEREFORE ORDERED that:

[REDACTED] decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/16/2009

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***** 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.