

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. 2009-19244CMH

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, an in-person hearing was held on [REDACTED]. [REDACTED], fair Hearing Officer, appeared on behalf of the [REDACTED] (Respondent or CMHSP). [REDACTED] was present as witness on behalf of the CMHSP. [REDACTED] was also present. [REDACTED] represented himself at hearing.

ISSUE

Did [REDACTED], the Community Mental Health Authority, properly determine that a neuro-psychologist evaluation is not a medically necessary Medicaid covered service for the Appellant?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is an RSDI, Medicare and Medicaid beneficiary. (uncontested)
2. [REDACTED] is a Prepaid Inpatient Health Plan (PIHP) under contract with the Michigan Department of Community Health to provide Medicaid covered services to Medicaid beneficiaries who reside in the service area. [REDACTED] is the Community Mental Health agency (CMHSP) contracted with [REDACTED] to provide services to residents of [REDACTED].

3. The Appellant is authorized to receive mental health services through ██████████, the CMHSP serving the Appellant's geographical area. (uncontested)
4. The Appellant's mental health diagnosis, per psychiatric evaluation in ██████████ ██████████, include: Axis I: major depression, recurrent, Somatoform disorder; Axis II: Borderline Personality disorder; Axis III: (list of various medical ailments); Axis IV psychosocial stressors: unemployment, chronic conflict, including conflict with Northpoint Community Mental Health. His Axis V GAF was 40 in December of 2008. (Department exhibit)
5. The Appellant's most recent Individual Plan of Service (IPOS) was completed in ██████████. (Department exhibit)
6. The Appellant seeks referral and treatment from a neuro-psychologist as part of his covered services through ██████████. (testimony from the Appellant)
7. The neuro-psychological evaluation and treatment services sought were not authorized by ██████████. (uncontested)
8. The Appellant made a self-referral to a neuro-psychologist and obtained the evaluation sought on ██████████. (uncontested)
9. The neuro-psychological evaluation sought was completed and resulted in 4 recommendations, none of which include further assessment, evaluation or services from a neuro-psychologist. (Department exhibit)
10. The Appellant seeks treatment from ██████████ as a person with a developmental disability, reportedly the non-verbal learning disability. (Appellant's testimony)
11. The Appellant has a verbal I.Q of 110, performance IQ of 91 and full scale I.Q of 102. (Department exhibit-psychological evaluation of ██████████ dated ██████████).
12. The Appellant resides by himself and without community living supports in his own home.
13. The Appellant sought and obtained assistance through a government program to qualify for and obtain a mortgage through a rural housing assistance program. (testimony of Appellant)
14. The Appellant completed a bachelor's of Arts degree in history. The Appellant furthered his education pursuing a master's degree and work as a pastor. (uncontested)
15. The Appellant has worked as a Certified Nursing Assistant (CNA), youth minister, associate pastor, employment consultant, dishwasher and house

- cleaner. (Appellant's testimony)
16. The Appellant maintains his own home and assists neighbors with lawn and snow maintenance. (Appellant's testimony)
 17. The Appellant manages his own finances. (Appellant's testimony)
 18. The Appellant has appropriate hygiene, grooming. (psychiatric evaluation dated ██████████)
 19. The Appellant owns and operates a motor vehicle. (Appellant's testimony).
 20. The Appellant is not substantially functionally limited in at least 3 qualifying major life activities.
 21. The Appellant is not developmentally disabled as defined by the Michigan Mental Health Code.
 22. Neuro-psychological services are not medically necessary to treat the Appellant's mental health needs.
 23. ██████████ does not provide treatment or services to the Appellant for a developmental disability. (uncontested)
 24. The Appellant requested a formal, administrative hearing to contest the denial of services sought, on or about ██████████.

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. Under approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Community Health (Department) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) HSW.

Medicaid Beneficiaries with a developmental disability are entitled to services through CMH if the following conditions are met:

1. They meet the service eligibility requirements per the MDCH/CMHSP Managed Specialty Supports and Services Contact: Attachment 3.3.1.
2. The service in issue is a Medicaid covered service, i.e. State Medicaid plan or waiver program service and
3. The service is medically necessary.

The Department's contract with CMH requires CMH to provide State Medicaid Plan services and services through the Medicaid Prepaid Specialty Mental Health and Substance Abuse Services combination 1915(b)/(c) waiver to Medicaid beneficiaries who meet the eligibility requirements for Medicaid specialized ambulatory mental

health/developmental disability services. See *MDCH/CMHSP Managed Specialty Supports and Services Contract: Attachment 3.3.1, pp 2-3*. The contract language incorporates by reference the Mental Health Codes eligibility criteria (MCL 330.1100a (20)) and provides that a developmental disability is defined as follows:

Developmental disability means either of the following:
If applied to an individual older than five years, a severe, chronic condition that meets all of the following requirements:

1. Is attributed to a mental or physical impairment or a combination of mental and physical impairments.
2. Is manifested before the individual is 22 years old.
3. Is likely to continue indefinitely.
4. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - Self-care
 - Receptive and expressive language
 - Learning
 - Mobility
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency.
5. 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.
MDCH/ CMHSP Managed Specialty Supports and Services Contract (10/1/02): Attachment 3.3.1, pp 2-3.

The Appellant asserts he is developmentally disabled. He submits he has been diagnosed as having a non-verbal learning disability. He further submits this diagnosis must be addressed and treated through ██████████. His testimony and documents assert his non-verbal learning disability results in inability to maintain employment. He identifies it as the central problem affecting virtually every aspect of his life in his testimony. This ALJ will address his concerns by evaluating the evidence of record in relationship to the definition of developmental disability set forth in the Michigan Mental Health Code and adopted as eligibility criteria by the Department of Community Health. Each area of major life activity is addressed below:

Mobility

There is no evidence in the record that the Appellant does has a substantial functional limitation in Mobility. He is ambulatory without assistance. Furthermore, the Appellant has a valid State of Michigan driver's license, is able to drive and own a vehicle. The Appellant is able to independently access community based activities, stores, medical appointments, recreational activities, meetings and restaurants.

Self Care

There is no evidence in the record that the Appellant is not independent in his activities of daily living. There is no assertion from the Appellant he is unable to provide for his own self care.

Learning

The evidence of record supports a finding the Appellant is not substantially functionally limited in learning. The fact of having some amount of impairment does not evidence a substantial functional limitation. The record is replete with uncontested evidence of the Appellant's ability to learn. The Appellant's I.Q. scores are inconsistent with a finding he suffers a substantial functional limitation or impairment in learning. The record also contains uncontested evidence he has earned a Bachelor of Arts degree in history from a university.

He pursued a master's degree that would allow him to work as a pastor. He obtained certification to work and did work as a certified nursing assistant for many years. He obtained and cited at hearing journal articles regarding his diagnosis of non-verbal learning disability. His written presentation of evidence at hearing contained legal citations. The research behind it evidences his lack of substantial functional limitation. His oral presentation at hearing was organized and evidenced no substantial functional limitation in learning. He is functioning at a level over and above what could reasonably be found to be a substantial functional limitation. It is obvious by his accomplishments that despite having been diagnosed as having a non-verbal learning disability, the Appellant has successfully adjusted to his condition such that it does not substantially limit or impair his ability to learn.

In this case, there is insufficient evidence in the record to make a finding the Appellant suffers a substantial functional limitation in learning as a result of his non-verbal learning disability.

Receptive and Expressive Language Skills

As stated above, the Appellant's college degree, masters work I.Q. scores and even his employment history demonstrate expressive and receptive language skills. In addition, this Administrative Law Judge observed the Appellant throughout the hearing and found him to be extremely articulate. He made good eye contact with the Administrative Law Judge during the majority of direct communication. The Appellant understood the questions posed to him and answered appropriately. The evidence presented shows that the Appellant does not have a substantial functional limitation in receptive and expressive language skills.

Self-Direction

The Appellant presented no evidence of a substantial functional limitation in the activity of self-direction. In fact, the evidence of record would contradict any such assertion. His life accomplishments are such that he demonstrates high functioning in this area. He does not require supervision or monitoring to be productive or refrain from self harm. He is able to ascertain when he requires medical attention and obtain it. Further evidence of his self-direction is evidenced by his pursuit of government/ community benefits and programs without benefit of a legal guardian, payee or attorney. The Appellant does not have a substantial limitation in the activity of self-direction.

Economic Self Sufficiency

It is uncontested the Appellant receives RSDI and food stamps. Income through an entitlement program, such as Appellant receives, demonstrates that the Appellant does not have limitations in economic self-sufficiency.

Capacity for Independent Living

The Appellant not only is capable of independent living, he aids others by removing snow for them and lawn mowing. The Appellant made no assertion he was unable to live independently. There is no evidence upon which a finding could be made that he is substantially functionally limited in this area.

The Appellant has not provided sufficient evidence to establish that he has met the eligibility criteria for developmental disability. The evidence and testimony provided establishes that the Appellant does not have a substantial functional limitation in self-care, learning, expressive and receptive language, economic self-sufficiency, self direction or his capacity for independent living. Because the evidence presented shows that the Appellant does not have a substantial functional limitation in 3 or more of the major life activities as required by the Medicaid service eligibility requirements of the Managed Specialty Supports and Services Contract Attachment 3.3.1, the Appellant is not eligible for Medicaid funded services provided through CMH as a developmentally disabled person. He continues to remain eligible for services as a seriously mentally ill individual. He has an IPOS and authorized services consistent with his IPOS and medical need.

The CMHSP asserts neuro-psychological services are not medically necessary to treat the Appellant's mental health needs. This ALJ concurs. The services provided by a neuro-psychologist are for the purpose of treating a learning disability as evidenced by the testimony from ██████████. It was not disputed by the Appellant that the purpose of the treatment sought was to treat his learning disability. The Appellant himself asserts he sought the services as a treatment for his perceived developmental disability. His testimony (paraphrased) was that he sought authorization for the evaluation and services because the staff at ██████████ does not understand his disability and they need to understand it. It is clear he does not seek the treatment as part of a mental health treatment plan, rather, because he is asserting he requires the treatment as part of plan to treat him for developmental disability. Given the finding that the Appellant does not meet the statutory definition of a developmentally disabled person for purposes of obtaining

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treatment and services through the CMHSP, there is no basis upon which this ALJ could order the treatment sought.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that [REDACTED] properly determined that the Appellant is not eligible for services and treatment as a developmentally disabled person, thus did not authorize a neuropsychological evaluation.

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]

Date Mailed: 6/30/2009

***** NOTICE *****

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 Administrative Tribunal 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.