

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-8999 CMH
Case No. ██████████
Load No. ██████████

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 ██████████. ██████████, Appellant's representative appeared and testified on Appellant's behalf. ██████████, a school social worker; and ██████████, a teacher of the cognitively impaired; testified as witnesses for Appellant. ██████████, Corporate Counsel for Community Mental Health of ██████████, represented the Department's agent, ██████████, Access Clinician for ██████████; and ██████████, Developmentally Disabled Supervisor for ██████████ testified as witnesses for the Department. ██████████

ISSUE

Did the Department ██████████ properly determine that Appellant did not meet the eligibility criteria for Medicaid-covered Community Mental Health (CMH) services?

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 a ██████████-old Medicaid beneficiary.
2. Appellant is developmentally disabled and receives Supplemental Security Income (SSI) on a monthly basis.

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 Contact: 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.* Each area of major life activity is addressed below:

Mobility

Neither the ██████████, nor the Appellant's representative disputed that Appellant does not have a substantial functional limitation in mobility.

Self-Care

According to the Psychosocial Assessment, Appellant requires prompting for self-care, but no physical assistance is needed. (Agency Exhibit 1, p. 12) Appellant's representative disputed ██████████ determination that Appellant does not have a substantial functional limitation in the area of self-care. Appellant's representative testified that Appellant's opportunity to do her activities of daily living is restricted at the AFC home because she is not allowed to do laundry; Appellant's meals are prepared for her; and chores are an option. Appellant's representative feels that Appellant's skills are impeded at the AFC Home. However, Appellant's representative agreed that Appellant only needs prompting in the area of self-care, and she provided no evidence to establish that Appellant needs supervision or hands-on assistance with her personal care activities. Further, the evidence on the record fails to establish that Appellant has a substantial functional limitation in the area of self-care.

Learning

There was no dispute that Appellant does have a substantial functional limitation in the area of learning.

Receptive and Expressive Language Skills

The ██████████ representative and witnesses provided evidence to establish that Appellant is not limited in the area of receptive and expressive language. It was noted during the evaluation that Appellant's expressive language was independent, and Appellant was effective in regards to receptive language skills throughout the intake. Further, Appellant was able to understand others and express ideas and information to others, independently. In addition it was noted that previous assessments of Appellant

revealed that she was able to communicate needs, thoughts and wants; she could use the telephone independently; and she did not require assistance in understanding questions or ongoing dialogue during intake. On ██████████, it was noted that Appellant lost a job due to inappropriate socialization with customers while working. Apparently, when Appellant would give a customer coffee, she would sit and talk with them instead of getting back to her work. (Agency Exhibit 1, pp. 5, 12 & 14) There is no evidence on the record to establish that Appellant has a substantial functional limitation in the area of receptive and expressive language.

Self-direction

There was no dispute that Appellant has a substantial functional limitation in the area of self-direction.

Capacity for Independent Living

The assessment on ██████████, revealed that although Appellant no longer uses independent living skills on a daily basis in the AFC home, she is not substantially limited in her ability to do so. It was noted that Appellant utilizes independent living skills at the Community Based Instruction (CBI) school setting through ██████████ Area Center. Additionally, it was noted that the previous assessments of Appellant revealed that she was able to cook in a microwave and on the stove, make her bed, clean her room, do the dishes, vacuum, mop the floor, clean the bathroom, do all laundry except white clothes that require bleach, pick out her shoes/CDs/movies when shopping; know how much change she should be given at a store; use public transportation; and understand the use of 911. There is no evidence on the record to establish that Appellant is substantially limited in the area of capacity for independent living.

Economic Self Sufficiency

Appellant receives Federal SSI benefits on a monthly basis. Income through an entitlement program demonstrates that the Appellant does not have limitations in economic self-sufficiency. Further, Appellant does not have to maintain a job because she has the entitlement program income, SSI benefits, to fall back on.

One of Appellant's witnesses testified that Appellant does not have anything to do when she leaves school, and she needs verbal assistance to function. Appellant's other witness testified that Appellant has been fired from 3 jobs and needs ██████████ to participate in the programs that she needs. It is clear that Appellant requires some prompting or reminding in the area of self-care and independent living. However, the evidence on the record is insufficient to establish that Appellant has a significant or severe functional limitation in three (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. Therefore, the Appellant would not be eligible for Medicaid-funded services provided through ██████████.

[REDACTED]
Docket No: 2009-8999 CMH
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant the Department [REDACTED] properly determined that Appellant did not meet the eligibility criteria for Medicaid-covered CMH services.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/9/2009

***** NOTICE *****

SOAHR 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 SOAHR 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.