

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

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IN THE MATTER OF

██████████
Appellant

_____ /

Docket No. 2009-23284 CMH
Case 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 ██████████. ██████████ appeared on behalf of the Appellant. Her witnesses were ██████████ and ██████████. ██████████, hearings coordinator, represented the Department. Her witness was ██████████, utilization manager.

ISSUE

Did the Department properly reduce personal care services to 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. At the time of hearing the Appellant is a ██████████ Medicaid beneficiary.
2. The Appellant is afflicted with: schizophrenia, moderate mental retardation, COPD, GERD, history of colon CA and seizure disorder. (Department's Exhibit A, p. 8)
3. The Appellant is currently prescribed and taking the following medications: Mellaril, Depakote, Synthroid and Omeprazole. (Department's Exhibit A, p. 12)

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4. The Appellant requires a special diet of increased calorie intake and high fiber prepared at Dysphagia Level 1. He requires [some level of] supervision while eating to avoid aspiration. (Department's Exhibit A, pp. 5, 12)
5. On ██████████, the Department denied 15 of 33 units of requested personal care units for the Appellant who resides in the ██████████. (Department's Exhibit A, p. 1)
6. The denial of 15 of 33 request units of personal care was based upon the Utilization Manager's review conducted on ██████████, wherein it was determined that the intensity of the requested services were not medically necessary. (Department's Exhibit A p. 1)
7. The Appellant was advised of the denial on ██████████. (Department's Exhibit A, pp. 2, 3)
8. The instant request for hearing was received by the State Office of Administrative Hearings and Rules (SOAHR) on ██████████. (Appellant's Exhibit #1)

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

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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. [REDACTED] contracts with the Michigan Department of Community Health to provide mental health services under the 1915(b) waiver.

Medicaid Beneficiaries are entitled to services through [REDACTED] if the following conditions are met:

1. They meet the service eligibility requirements per the [REDACTED] Managed Specialty Supports and Services Contact: Attachment 3.3.2.
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.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 CFR 440.230. ██████████ is required to use a person-centered planning process to identify medically necessary services and how those needs are to be met.

Medically necessary services are generally those identified in the Appellant's person-centered plan. The SOAHR 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.

██████████ provided an Adequate Action Notice to the Appellant that ██████████ had determined that the Appellant's request for 33 units of personal care services would be approved in part and denied in part subject to utilization review and medical necessity.

Furthermore, the Department correctly observed that the Medicaid Provider Manual (MPM) sets forth certain base line personal care requirements for a beneficiary living in a licensed foster care setting:

PERSONAL CARE IN LICENSED SPECIALIZED RESIDENTIAL SETTINGS

Personal care services are those services provided in accordance with an individual plan of service to assist a beneficiary in performing his own personal daily activities. Services may be provided only in a licensed foster care setting with a specialized residential program certified by the state. These personal care services are distinctly different from the state plan Home Help program administered by DHS.

Personal care services are covered when authorized by a physician or the case manager or supports coordinator, in accordance with an individual plan of services, and rendered by a qualified person.

Supervision of personal care services must be provided by a health care professional who meets the qualifications contained in this chapter.

SERVICES

Personal care services include assisting the beneficiary to perform the following:

- Assistance with food preparation, clothing and laundry, and housekeeping beyond the level required by facility licensure, (e.g., a beneficiary requires special dietary needs such as pureed food);
- Eating/feeding;
- Toileting;
- Bathing;

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- Grooming;
- Dressing;
- Transferring (between bed, chair, wheelchair, and/or stretcher);
- Ambulation; and
- Assistance with self-administered medications. (Emphasis supplied) MPM, Mental Health [], §§11, 11.1, July 1, 2009, p. 60

The testimony established that the Appellant required significant attention to meal supervision owing to his tendency to aspirate, sneak food and engage in eccentric food behaviors. The Appellant's therapist, ██████████, testified that a swallow study confirmed that the Appellant aspirates 25 per cent of his meal consumption and that he presents as a "silent food aspirator" thus requiring significant monitoring.

██████████ said that owing to his lack of comprehension and COPD the issue of aspiration is significant and intertwined with his overall respiratory health. She said he is extremely non compliant.

She added that "cough counting" during meals and post meals by staff is an important piece of information for the therapist evaluation in addition to the dangers involved in group eating - thus extra staff input and supervision is necessary.

██████████ conducted the ██████████, evaluation of the Appellant which resulted in a treatment plan confirming the need to maintain a minimum body weight, avoid aspiration and its complications. His observation of the previously referenced swallow study also found that the Appellant was [by mouth] a "food pocketeer" – thus further demonstrating additional risk for aspiration and need for pre-post meal supervision.

The Department witnesses observed that the time requested for hand washing was excessive at 6 units and noted that 3 units would accomplish adequate sanitation for the Appellant's waking day. The Appellant's witnesses observed that the beneficiary has a tendency to accumulate fecal material under his nails.

The request for daily temperature monitoring, absent medical necessity, was correctly observed to be the responsibility of the AFC under its licensing rules. R400.13310

On review, the Appellant's witnesses established medical necessity for the additional units of personal care owing to his swallowing difficulty, aspiration factor and food pocketing, cough counting - and inability to comprehend appropriate behaviors the additional units of meal supervision are medically necessary, while the food preparation remains the responsibility of the AFC.

The following summary represents the ALJ's findings and order:

- The intervention of Puree/thickened meals is denied, 0 units approved – as originally ordered.
- Hand washing assist at 6 units is denied – 3 units approved – as originally ordered.
- Taking temperature is denied – 0 units approved - as originally ordered.
- Meal supervision is approved at 18 units - owing to Appellant's medical necessity.¹

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department did not properly reduce the Appellant's personal care units.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED in part and REVERSED in part.

IT IS FURTHER ORDERED that:

The Department shall provide the APPELLANT with (5) five additional units of personal care for the medically necessary task of meal supervision.

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

cc:

[REDACTED]

Date Mailed: 8/12/2009

¹ This represents an increase of 5 units.

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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.