

**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. 2009-29638 CMH
Case No. 89151074

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 September 15, 2009. ██████████ and ██████████ ██████████ appeared on behalf of their daughter, ██████████ (Appellant), who also appeared.

Greg Rappleye, Corporation Counsel, appeared on behalf of the Ottawa County Community Mental Health Authority (OCCMHA, hereafter, 'Department'), an agency contracted with the Michigan Department of Community Health to provide Medicaid-funded mental health specialty supports and services. Also appearing as witnesses for the Department were Maureen Russell, Access Clinician, Lynne Doyle, Program Director, Jane Longstreet, Mental Health Program Supervisor and Fair Hearing Officer.

ISSUE

1. Does the Appellant meet service eligibility requirements as an individual with a developmental disability?
2. 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 who has past diagnoses of borderline hydrocephalus, attention deficit disorder, and anxiety disorder-not otherwise

specified (NOS). At present, she displays symptoms typical of Prader-Willi Syndrome, including mild to moderate mental retardation, obsessive compulsive disorder features, unusual food-seeking behaviors, behavioral problems in relationship to food and skin picking. However, a June 2009 Spectrum Health, Genetics Clinic, physical examination detected none of the physical features associated with Prader-Willi Syndrome or any other genetically-related abnormality. Furthermore, specialized testing revealed no genetic abnormalities. (*Exhibit 1; pages 5; 20-23*)

2. The Appellant has requested Medicaid-funded residential placement in a setting that specializes in treating Prader-Willi Syndrome. (*See Request for Hearing*)
3. On May 26, 2009, a face-to-face meeting occurred between the Appellant and a Master's level access clinician to determine eligibility. Thereafter, OCCMHA denied the Appellant's request for Medicaid-funded specialty mental health services upon a finding that she failed to meet service eligibility criteria as an individual with either a developmental disability or a serious mental illness. A second opinion dated June 8, 2009 upheld this determination. (*Exhibit 1; p. 9*)
4. The Appellant needs reminders for self-care tasks. She is independent in performing all self-care tasks, but if not reminded, does not attend to them. The Appellant needs to be told of weather conditions with prompts regarding weather-appropriate clothing. She is able to feed herself and is resourceful in meeting that need. Cameras are installed in the family home to monitor her activity when she is home alone; she is under continuous supervision at school to ensure her safety with regard to eating. Additionally, she does not attend to hygiene following a bowel movement, which needs to be monitored. The Appellant possesses good expressive and receptive language skills, and does not require assistance in communication. She also is capable of dialing a phone independently. (*Exhibit 1; p. 6*)
5. The Appellant began special education services through home-based services and then PPI. She has consistently received services related to cognitive and emotional impairment. Additionally, she is mainstreamed with regard to math and art. All other classes were within the special education classroom. A psychological evaluation dated May 6, 2008, indicate a full scale IQ of 69; verbal IQ of 65; performance IQ of 78. The Appellant will return to Jenison Public Schools for one more year following a graduation ceremony in May 2009. (*Exhibit 1; p. 6*)
6. The Appellant is under direct supervision all but 2 ½ hours each day. During that time, she is under camera surveillance to monitor her safety. All food storage areas are locked at home to ensure safety with regard to suspected Prader-Willi Syndrome. She is also under constant supervision at school to ensure safety with regard to eating issues. The Appellant rummages through trash cans, classroom cupboards and student lockers searching for food, and will give other students money to purchase food on her behalf. She is monitored while eating due to her tendency to use as many condiments and salt as possible with the goal of creating a

greater quantity of food. Her lunch box is locked---only parents and school staff have a key to open it. (*Exhibit 1; p. 6*)

7. The Appellant is prohibited from venturing into the community unsupervised. She has walked as far as three blocks from her home in search of food. She has requested food from strangers by knocking on their door, requesting a cup of sugar to bake, and has entered the garage of neighbors and taken food from their freezer. When confronted with behaviors regarding food, the Appellant becomes defensive, plugs her ears and yells. She has become aggressive the past and has damaged personal and/or real property in her home, but once she calms down, expresses regret for her food-seeking behaviors. The Appellant's parents handle all financial aspects of her life. (*Exhibit 1; p. 7*)
8. The Appellant independently selects from a broad range of available activities while home alone. She is, however, prevented from accessing Facebook due to the degree of vulnerability presented, as she tends to provide strangers with personal information in order to obtain food and friendship. The Appellant is trusting of others without question, and on at least one occasion, asked a stranger for a ride to school. (*Exhibit 1; p. 7*)
9. The Appellant unloads the dishwasher, vacuums, sweeps and mops floors; makes her bed and does laundry independently. She is capable of cooking items in the microwave oven independently by reading the directions. She does not cook on the stove top or oven independently, however. She is aware of what size clothing she wears, although her mother assists her with style selection and fit. The Appellant denies paying for items independently, stating she would not know how much money to give a cashier, but is able to count the change returned for accuracy. She has been employed through community-based work sites at Jenison Public Schools, including a bowling alley where she cleaned. She has also worked at Culvers Restaurant collecting food trays; she was closely supervised at each work site. (*Exhibit 1; p. 7*)
10. Following the May 26, 2009 evaluation, the Access Center clinician concluded that the Appellant displayed substantial functional limitations in the areas of self-direction and capacity for independent living, but only moderate or no impairments in the other five areas of major life activities under review. OCCMHA also reviewed Mental illness criteria, and made a determination that the Appellant's diagnosis of Anxiety Disorder NOS and ADHD are not qualifying diagnoses for Medicaid-funded specialty mental health services. (*Exhibit 1; p. 9*)
11. On August 12, 2009, the Appellant filed her Request 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...

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 operates a section 1915(b) Medicaid Managed Specialty Services waiver. WCHO contracts with the Department to provide specialty mental health services. Services are provided by WCHO pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible. 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.

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 satisfies that burden 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).

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).

Service Eligibility Criteria for Medicaid Covered Services

In January 2008, Department staff sent all PIHPs, including OCCMHA, a copy of the approved amendments to the MDCH/PIHP FY 2003 through FY 2008 contracts for Medicaid services. These approved amendments included a deletion of the following attachments from the FY 2008 contact:

- Attachment 3.2.1 Medical Necessity Criteria
- Attachment 3.3.1 Service Selection Guideline- Development Disabilities
- Attachment 3.3.2 Service Selection Guideline-Mental Health
- Attachment 6.8.2.5 Substance Abuse Practice Guideline

The Department made the deletions effective and binding on all PIHPs, including OCCMHA, retroactive to October 1, 2006. Subsequently, the Department and OCCMHA entered into FY 2009 contact for Medicaid covered services. The FY 2009 contract was the contract in effect at the time of OCCMHA's decision to deny the Appellant Medicaid-funded mental health services.

The FY 2009 MDCH/CMHSP Managed Specialty Supports and Services Contract, Sections 2.0 and 3.1 and Attachment 3.1.1, Section III (a) Access Standards-10/1/08, page 4, directs OCCMHA to the Medicaid Provider Manual for determining coverage eligibility for Medicaid-covered mental health services for Medicaid beneficiaries.

Department policy at the Medicaid Provider Manual (MPM), Mental Health and Substance Abuse, Beneficiary Eligibility, Section 1.6 provides the service eligibility criteria in effect at the time of the denial of services. Section 1.6 is the Department's attempt to clarify the demarcation between PIHP and Medicaid Health Plan (MHP) responsibility for Medicaid specialized outpatient mental health services. These MPM eligibility requirements are as follows:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record. The following table has been developed to assist health plans and PIHPs in making coverage determination decisions related to outpatient care for MHP beneficiaries. Generally, as the beneficiary's psychiatric signs, symptoms and degree/extent of functional impairment increase in severity, complexity and/or duration, the more likely it becomes that the beneficiary will require specialized services and supports available through the PIHP/CMHSP. For all coverage determination decisions, it is presumed that the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders published by the American Psychiatric Association.

<p>In general, MHPs are responsible for outpatient mental health in the following situations:</p> <p><input type="checkbox"/> The <u>beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity</u> to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal</p>	<p>In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:</p> <p><input type="checkbox"/> The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to perform daily living activities (or for minors, substantial interference in achievement or maintenance of</p>
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<p>clinical (self/other harm risk) instability.</p> <p><input type="checkbox"/> The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the condition within the last 12 months). <u>The beneficiary currently needs ongoing routine medication management without further specialized services and supports.</u></p>	<p>developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills).</p> <p><input type="checkbox"/> The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse.</p> <p><input type="checkbox"/> The beneficiary has been treated by the MHP for mild/moderate symptomatology and temporary or limited functional impairments and has exhausted the 20-visit maximum for the calendar year. (Exhausting the 20-visit maximum is not necessary prior to referring complex cases to PIHP/CMHSP.) The MHP's mental health consultant and the PIHP/CMHSP medical director concur that additional treatment through the PIHP/CMHSP is medically necessary and can reasonably be expected to achieve the intended purpose (i.e., improvement in the beneficiary's condition) of the additional treatment.</p>
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*Medicaid Provider Manual,
Mental Health and Substance Abuse,
Beneficiary Eligibility Section, July 1, 2009, page 3.*

The FY 09 MDCH/CMHSP Managed Specialty Supports and Services Contract, Section 1.0 identify the definitions to be used when interpreting the contract. Section 1.0 provides:

1.0 DEFINITION OF TERMS

The terms used in this contract shall be construed and interpreted as defined below unless the contract otherwise expressly requires a different construction and interpretation.

Included in section 1.0 are the Mental Health Code definitions of Serious Mental Illness, Serious Emotional Disturbance, and Developmental Disability. Therefore, according to section 1.0 of the contract the Mental Health Code definitions apply to the contract.

The MDCH/CMHSP Managed Specialty Supports and Services Contract, Sections 2.0 and 3.1 and Attachment 3.1.1, Section III (a) Access Standards-10/1/08, page 4, direct the ALJ and the PIHP to the MPM when determining the Appellant's eligibility for Medicaid covered mental health services.

The terms and conditions of the FY 09 Managed Specialty Supports and Services Contract also provide that the interpretation of the Managed Specialty Supports and Services Contract terms and conditions must be made using the section 1 definitions and the documents listed in section 18. Therefore, the Appellant's eligibility for Medicaid funded outpatient mental health services should have been determined by WCHO using the MDCH/CMHSP Managed Specialty Supports and Services Contract., Mental Health Code and MPM Mental Health-Substance Abuse section.

Contract section 18.0 provides in pertinent part:

18.0 ENTIRE AGREEMENT

The following documents constitute the complete and exhaustive statement of the agreement between the parties as it relates to this transaction.

- A. This contract including attachments and appendices
- B. The standards as contained in the Application for Participation (AFP) as they pertain to the provision of specialty services to Medicaid beneficiaries and the plans of correction and subsequent plans of correction submitted and approved by MDCH and any stated conditions, as reflected in the MDCH approval of the application unless prohibited by federal or state law
- C. Michigan Mental Health Code and Administrative Rules
- D. Michigan Public Health Code and Administrative Rules
- E. Approved Medicaid Waivers and corresponding CMS conditions, including 1915(b) and (c) Waivers
- F. MDCH Appropriations Acts in effect during the contract period
- G. Balanced Budget Act of 1997 (BBA) final rule effective 42 CFR 400, et al June 14, 2002

- H. All other pertinent Federal and State Statutes, Rules and Regulations
- I. All final MDCH guidelines, and final technical requirements, as referenced in the contract. Additional guidelines and technical requirements must be added as provided for in Part 1, Section 16.0 of this contract
- J. Michigan Medicaid Provider Manual: Mental Health-Substance Abuse section

Thus, OCCMHA and the ALJ are required to consider and apply the service eligibility criteria in effect at the time of OCCMHA's review of the Appellant's eligibility for Medicaid-covered outpatient mental health services.

Application of the MDCH/CMHSP Managed Specialty Supports and Services Contract, Mental Health Code, and MPM Section 1.6

Section 18 of the FY 09 MDCH/CMHSP Managed Specialty Supports and Services Contract requires the application of the Mental Health Code definitions to the terms and condition of the contract. Therefore according to the contract, service eligibility determinations must be made using the Mental Health Code definitions and section 1.6 of the Medicaid Provider Manual (text omitted, as already referenced above)

The Mental Health Code defines Developmental Disability, Serious Emotional Disturbance, and Serious Mental illness as follows:

- (21) "Developmental disability" means either of the following:
 - (a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
 - (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - (ii) Is manifested before the individual is 22 years old.
 - (iii) Is likely to continue indefinitely.
 - (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (A) Self-care.
 - (B) Receptive and expressive language.
 - (C) Learning.
 - (D) Mobility.
 - (E) Self-direction.
 - (F) Capacity for independent living.
 - (G) Economic self-sufficiency.
 - (v) 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.

(b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided

MCL 330.1100a(21)

(3) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed during 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 department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) "V" codes in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d(3)

Has OCCMHA appropriately determined the Appellant ineligible for Medicaid-funded services as an individual with a developmental disability?

With regard to self-care, the evidence establishes the Appellant needs reminders for self-care tasks, but is otherwise independent in performing those tasks. She needs prompting to wear appropriate clothing for weather-related conditions, but is otherwise capable of dressing herself. She is able to feed herself and is resourceful in meeting that need. Cameras are installed in the family home to monitor her activity with regard to eating when she is home alone, and in fact, she is under continuous supervision at school to ensure her safety with regard to eating. However, this fact alone does not amount to a substantial impairment in functioning, as she is physically capable of eating. Although she does not attend to hygiene following a bowel movement, it is unclear from the record whether she is unable to perform this task due to developmental delay or whether she is simply unwilling to do so. (*Exhibit 1; p. 6*)

With regard to language, the evidence indicates the Appellant possesses good expressive and receptive language skills, and does not require assistance in communication. She also is capable of dialing a phone independently. (*Exhibit 1; p. 6*)

With regard to learning, the evidence presented establishes that the Appellant receives special education services related to cognitive and emotional impairment. Additionally, she is mainstreamed with regard to math and art. All other classes were within the special education classroom. A psychological evaluation dated May 6, 2008, indicate a full scale IQ of 69; verbal IQ of 65; performance IQ of 78. (*Exhibit 1; p. 6*) Thus, I conclude that OCCMHA's determination of moderate functional impairment is appropriate.

With regard to mobility, there is no evidence of substantial functional impairment in this category.

With regard to self-direction and capacity for independent living, OCCMHA determined the Appellant to be substantially functionally impaired, due primarily to her obsession with food. (*See Findings of Fact 6 through 9*)

Based on the evidence presented, I conclude that OCCMHA has properly determined the Appellant ineligible for Medicaid-funded mental health services as an individual with a developmental disability.

Has OCCMHA appropriately determined the Appellant ineligible for Medicaid-funded mental health services as an individual with serious mental illness?

MPM Section 1.6 provides in pertinent part:

it is presumed that the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders (DSM) published by the American Psychiatric Association.

Section 1.6, unlike the prior and now deleted service selection criteria, does not require any specific mental health diagnosis. Section 1.6 only requires a diagnosis that is identified as a DSM mental illness diagnosis. The record contains evidence the Appellant has been diagnosed with Anxiety Disorder, Attention Deficit Hyperactivity Disorder (ADHD), and Mild Mental Retardation, all of which are mental illnesses and/or conditions recognized by and included in the DSM-IV-TR. (*Reference DSM-IV-TR; pp. 43, 85, and 484*)

The first paragraph of Section 1.6 of the MPM does not require that the beneficiary's mental illness be a serious mental illness. However, the chart following the first paragraph requires a "serious mental illness" diagnosis. The language provided in the chart below the first two paragraphs of the policy indicates that the policy applies to a beneficiary who:

... is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to perform

daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills).

Thus, it appears the language in the first paragraph of Section 1.6 is inconsistent with and contradicts the language provided in the chart that follows.

The terms and conditions of the FY 09 Managed Specialty Supports and Services Contract provide that the interpretation of the Managed Specialty Supports and Services Contract terms and conditions must be made using the Managed Specialty Supports and Services Contract, Section 1 definitions, and the documents listed in section 18. Therefore, the Appellant's eligibility for Medicaid-funded outpatient mental health services must be determined using the MDCH/CMHSP Managed Specialty Supports and Services Contract, Mental Health Code, and MPM Mental Health/Substance Abuse section.

Additionally, the apparent inconsistency contained in section 1.6 must be resolved through an application of the Mental Health Code definition of Serious Mental illness. The Mental Health Code defines Serious Mental Illness as follows:

... 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 department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness....

MCL 330.1100d(3)

The evidence establishes that the Appellant's diagnosis of Anxiety Disorder, ADHD and mild mental retardation, have existed for well beyond the 12 months before the Appellant's request for Medicaid covered services. (See *Exhibit 1; p. 29*) Neither the MDCH/CMHSP Managed Specialty Supports and Services Contract, nor the MPM Mental Health/Substance Abuse section, provides a listing of the DSM diagnosis's which have been "approved by the Department".

The Appellant's mental illness appears to have resulted in functional impairments that substantially interfere with or limit one (1) or more major life activities, specifically, her ability to control her desire for food. In fact, under the developmental disability analysis, OCCMHA determined the Appellant to be substantially functionally impaired in two major life activities, self-care and capacity for independent living.

MPM, section 1.6, chart bullet two provides that a beneficiary meets the service eligibility criteria if the beneficiary does not have a current or recent (within the last 12 months) serious condition but was seriously impaired in the past, currently has clinically significant residual symptoms and impairments and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments to promote recovery and/or prevent relapse.

The bullet two eligibility requirements appear satisfied if a beneficiary had a qualifying diagnosis at any point in the past plus a current impairment which requires specialized services or supports. Even if the Appellant failed to meet chart bullet one criteria, her former diagnosis of anxiety disorder NOS, ADHD and mild mental retardation, combined with her current need for specialized services and supports would meet the chart bullet two requirements.

MPM, section 1.6, bullet two in effect creates a lifetime qualifying diagnosis if the beneficiary at any time during his or her lifetime is diagnosed with mental illness which qualifies as a serious mental illness. However, despite this diagnosis exemption the beneficiary is not entitled to specialized services and supports until he or she establishes at the time of the eligibility determination that he has a current functional impairment and a current medical need for specialized services and supports.

The Appellant's parents credibly testified the Appellant has engaged in extreme measures, and subjected herself to the risk of harm, in an effort to obtain food. These behaviors include rummaging through trash cans, approaching strangers, both in person and via internet, in order to obtain food, and stealing food from the garages of neighbors. OCCMHA did not dispute this testimony.

Rather, OCCMHA asserts the Appellant's mental illness and/or her symptoms do not rise to the level of severity required to attain eligibility for Medicaid-funded services. This assertion appears based on the now deleted MDCH/CMHSP Managed Specialty Supports and Services Contract attachment 3.3.2. However, as previously articulated, the first paragraph of Section 1.6 of the MPM does not require that the beneficiary's mental illness be a serious mental illness, even though the bullet points that follow this paragraph do, in fact, require some degree of severity.

Reading together both MPM Section 1.6 and the bullet points that follow, it appears that, even if it is found that the Appellant does not have a current (within the last 12 months) serious mental illness the Appellant's current service needs are evidence that she currently requires supports and services beyond what the MHP would provide, to address residual symptomatology and/or functional impairment, promote recovery, and/ or prevent relapse.

Based on the evidence presented, I conclude that, even if the Appellant's diagnoses of anxiety disorder, ADHD and mild mental retardation do not meet the requirements of MPM, Section 1.6, chart bullet one, her residual symptomatology, combined with her past diagnoses, meet the requirements of chart bullet two.

[REDACTED]
Docket No. 2009-29638 CMH
Decision and Order

Accordingly, I conclude that OCCMHA erred by failing to properly apply to the Appellant the service selection criteria found in the FY 09 MDCH/CMHSP Managed Specialty Supports and Services Contract, and MPM Mental Health Substance Abuse Services section 1.6.

DECISION AND ORDER

I decide that OCCMHA erred by determining the Appellant ineligible for Medicaid funded Managed Specialty Supports and Services as an adult with serious mental illness.

IT IS THEREFORE ORDERED THAT:

OCCMHA's decision is REVERSED.

IT IS FURTHER ORDERED:

OCCMHA must initiate a Person Center Planning process within 30 days of this Decision and Order which includes the development of an Individual Plan of Service.

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

cc:

[REDACTED]

Date Mailed: _____

***** 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 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.