

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

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IN THE MATTER OF

Docket No. 2010-13515 CMH
Case No. 15609776

[REDACTED]

Appellant

_____ /

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], Appellant's friend, appeared on behalf of the Appellant. [REDACTED] was present and provided testimony.

[REDACTED] (CMH), represented the CMH. [REDACTED]; and [REDACTED] appeared as witnesses for the Department.

ISSUE

Did CMH properly determine the Appellant was not eligible for 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 [REDACTED] year-old Medicaid beneficiary. (Exhibit 1).
2. Appellant is also enrolled in Medicare.
3. Appellant is currently placed on a Section 8 Housing waiting list.
4. [REDACTED] is responsible for providing Medicaid-covered services to eligible recipients in its service area.

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5. Appellant is not currently enrolled in [REDACTED].
6. In or before [REDACTED] the Appellant requested Medicaid-covered CMH services through CMH. (Exhibit 1). The Appellant stated as the reason for the request: "I was told to come here for housing." (Exhibit 1, p 2)
7. On [REDACTED] a CMH worker performed an eligibility assessment for Appellant. (Exhibit 1).
8. At the [REDACTED], eligibility assessment the Appellant stated he had a history of depression but was not suicidal or homicidal and had not had an inpatient mental health hospitalization. (Exhibit 1). The Appellant denied the need for any mental health services, but requested housing assistance. (Exhibit 1, p 7)
9. As a result of the [REDACTED], eligibility assessment the CMH concluded the Appellant did not have a severe and persistent mental illness and could receive his mental health services through his MHP. (Exhibit C).
10. As a result of the [REDACTED], eligibility assessment the CMH concluded the Appellant was not eligible for developmental disabilities (DD) services. (Exhibit C).
11. On [REDACTED], the CMH sent an Adequate Action Notice to the Appellant indicating that his request for CMH services was denied. (Exhibit 1, p 9). The reason CMH gave for not authorizing services was "You do not meet the eligibility criteria for a person with a severe and persistent mental illness and/or developmental disability. (Exhibit 1, p 9).
12. On [REDACTED], a second opinion access screen was performed by CMH. (Exhibit 1, pp 11-18). The second assessment upheld that the Appellant was not eligible for CMH services and Appellant was sent an Adequate Action Notice. (Exhibit 1, pp 19, 21).
13. The Appellant's request for hearing was received on [REDACTED]. (Exhibit 2). The Appellant contests the denial because he seeks assistance with housing. (Exhibit 2).

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 she 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 (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. ██████████ contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH 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.

Denial of CMH Mental Health Services

The *MDCH/CMHSP Managed Specialty Supports and Services Contract, Section 3.3* and Exhibit 3.1.1, Section III(a) Access Standards-10/1/08, page 4, directs a CMH to the Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter* for determining coverage eligibility for Medicaid beneficiaries.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility, Section 1.6*, (MPM) makes the distinction between the CMH responsibility and the Medicaid Health Plan (MHP) responsibility for Medicaid outpatient mental health benefits but does not provide a definition of, or provide eligibility criteria for, severe and persistent mental illness.

Furthermore, *MDCH/CMHSP Managed Specialty Supports and Services Contract, Attachment 3.1.1*, (contract) instructs that the use of the Michigan Mental Health code is only to be used if the individual seeking eligibility is NOT eligible for Medicaid.

The CMH Representative indicated that the Michigan Mental Health Code definition of severe and persistent mental illness was utilized by CMH to determine Appellant was not eligible for CMH services. The Service Selection Guidelines section of the current contract no longer includes the Mental Health Code definition of severe and persistent mental illness and does not refer PIHPs to the Mental Health Code to determine eligibility for Medicaid-covered CMH services for a person with severe and persistent mental illness. Because there is no clear instruction in the contract or the MPM, on what definition or criteria is to be used by CMHs to determine eligibility for CMH severe and persistent mental illness services, in this instance it was reasonable for CMH to use the Mental Health Code definition.

The definition of serious mental illness found in the Mental Health Code is as follows:

(3) "Serious mental illness" means 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. 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.

MCL 330.1100d(3)

The CMH witness testified that based on information provided by Appellant for the assessments it determined that the Appellant had a history of depression but was not suicidal or homicidal and had not had an inpatient mental health hospitalization. (Exhibit 1, pp 2, 5, 7). The CMH further testified that the Appellant denied any mental health symptoms and his mental status showed nothing outside normal status. (Exhibit 1, pp 2, 5). Based on the fact that the Appellant did not present with a diagnosable mental, behavioral, or emotional disorder that had existed within the past year and that has resulted in functional impairment that substantially interfered with or limited one or more major life activities, the CMH determined Appellant not have a severe and persistent mental illness.

The Appellant and his representative testified that the Appellant was referred to CMH for housing assistance. The Appellant explained that someone had told him CMH clients can get housing paid for. The CMH Representative clarified that Medicaid-covered, CMH housing assistance is only a short-term, interim, one-time-only expense when transitioning from a restrictive setting and homelessness. See *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, 17.3.G, January 1, 2010, p. 105.*

Based on the testimony and document evidence the CMH established it properly denied specialized mental health services because the Appellant did not have a diagnosable mental, behavioral, or emotional disorder that had existed within the past year and that

has resulted in functional impairment that substantially interfered with or limited one or more major life activities.

Denial of CMH Developmental Disability services –

The fact that the Appellant did not meet the Michigan Mental Health Code definition of developmental disability is not a disputed fact in the case. The Appellant is not eligible for Medicaid-covered CMH services as a person with a developmental disability.

Summary

The Appellant did not provide a preponderance of evidence that he met the Mental Health Code requirements for a person with severe and persistent mental illness. The Appellant is not eligible for Medicaid-covered CMH services as a person with a developmental disability. The CMH's denial of eligibility for Medicaid-covered CMH services was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH's denial of eligibility for Medicaid-covered CMH services was proper.

IT IS THEREFORE ORDERED that:

The CMH's eligibility denial decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 3/10/2010

***** 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.