

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

P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 334-9505

IN THE MATTER OF

Docket No. 2010-20731 CMH
Case No. [REDACTED]

[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 mother, [REDACTED], appeared on behalf of the Appellant.

[REDACTED] (CMH), represented the Department. [REDACTED] appeared as a witness for the Department.

ISSUE

Did CMH properly determine the Appellant was not eligible for developmental disability services through CMH?

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 ([REDACTED]).
2. [REDACTED] is a CMHSP.
3. From [REDACTED] through [REDACTED], Appellant received services from CMH as a person with a developmental disability. (Exhibit D, p 36).
4. The Appellant is currently prescribed but refuses to take the medications Risperdal, Straterra, Concerta, Equetro and Remeros. (Exhibit D, p. 33).
5. Appellant left her family home because of inter-relational problems and lives with her grandmother. (Exhibit D).

6. In ██████████ Appellant had a psychological evaluation pursuant to her school special education that found her at borderline intellectual functioning and verified her certification of Emotionally Impaired. (Exhibit D, pp 19-20).
7. Appellant's ██████████, person-centered plan authorized 50 hours of respite per month and 108 hours of community living supports per month from CMH.
8. In ██████████, an annual authorization of services was performed for Appellant and CMH completed an assessment of Appellant's record, including whether the Appellant was eligible for developmental disability services. (Exhibit F).
9. The assessment reported Appellant's diagnoses as: Mood disorder NOS, psychotic disorder NOS, attention deficit/hyperactivity disorder. (Exhibit F, p 39).
10. On ██████████, the CMH performed a Determination of Developmental Disability. It concluded the Appellant had only two (2) substantial functional limitations, mobility and economic self-sufficiency, and therefore, did not qualify as a person with a developmental disability. (Exhibit E).
11. On ██████████, the CMH sent an Adequate Action Notice to the Appellant indicating that her respite, community living supports and supports coordination services were denied. (Exhibit A). The reason CMH gave for not authorizing services was because the Appellant had not met criteria for the services. (Exhibit A).
12. The Appellant's request for hearing was received on ██████████. (Exhibit B).
13. On or after ██████████, CMH deemed Appellant as a person with Serious Emotional Disturbance and authorized case management services to assist Appellant with transitioning to adult services when she turns eighteen in August. (Exhibit G).

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 (MDCH) operates a section 1915(b) Medicaid Managed Specialty Services waiver. ██████████ contracts with the Michigan Department of Community Health to provide specialty mental health 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. 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.

The *MDCH/CMHSP 2008 Managed Specialty Supports and Services Contract, Section 3.3 and Exhibit 3.1.1, Section III(a) Access Standards* directs a CMH to the Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter* for determining coverage eligibility for Medicaid beneficiaries. The text of the introductory paragraph of Medicaid Provider Manual (MPM) Section 1.6 states that it provides guidance to PIHP's regarding eligibility for a person with a developmental disability.

However, a review of the chart provided in MPM 1.6 demonstrates that while it is instructive on eligibility for people with mental illness, it does not specifically and explicitly address eligibility for people with developmental disabilities. Furthermore, *MDCH/CMHSP Managed Specialty Supports and Services Contract, Exhibit 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. This contract statement appears to disregard all Medicaid eligible persons seeking CMH services as a person with a developmental disability. This Administrative Law Judge sought clarification from the contract exhibit titled, "CHMSP/HP Model Agreement: Developmental Disabilities," *Contract Exhibit 6.4.5.1B, Section D. 1*.

Exhibit 6.4.5.1B, Section D. 1 reads:

...Eligibility criteria for specialty developmental disability (DD) services are outlined in Exhibit 1.

"Exhibit 1" did not follow *Exhibit 6.4.5.1B* and could not be located.

The CMH witness indicated that the Michigan Mental Health Code definition of developmental disability 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 developmental disability and does not refer PIHPs to the Mental Health Code to determine eligibility for Medicaid-covered CMH services for a person with developmental disability. Because the Department lacks a clear instruction on what definition or criteria is to be used by CMHs to determine eligibility for CMH developmental disability services, in this instance it was reasonable use the Mental Health Code definition, also found in the definition section of the contract:

(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.
- (A) 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.

MCL 330.1100a

The CMH witness testified at hearing that from ██████████ Appellant received services from CMH as a person with a developmental disability. (Exhibit D, p 36). The CMH witness said that at the ██████ annual assessment it was questioned whether Appellant's determination was correct. In order to clarify the CMH witness said Appellant underwent a determination which found she did not meet the definition of developmental disability, and therefore, was not eligible for CMH services as a person with developmental disability. (Exhibit E).

For purposes of simplifying the application of the Mental Health Code definition to Appellant's facts, in general, the Appellant must meet four criteria: 1) physical impairment, 2) manifestation before age 22, 3) physical impairment to continue indefinitely, and 4) physical impairment resulting in substantial functional limitations in three or more areas of major life activity.

The CMH witness testified that the Appellant did not meet criteria 4) physical impairment resulting in substantial functional limitations in three or more areas of major life activity. The CMH witness explained that Appellant had only two substantial functional limitations: mobility because at age ██████ and living with her grandmother she lacked access to the community, and economic self-sufficiency because at age ██████ and in high school full-time she did not have a full-time job. The CMH witness explained that because Appellant did not have substantial functional limitations in three or more areas of major life activity she did not qualify as a person with a developmental disability. (Exhibit E).

The Appellant's mother/representative testified that she and Appellant do not get along and Appellant moved out of the family home. The Appellant's mother/representative described in detail how the Appellant has no friends and the community living supports provider is the person the Appellant can go out into the community with or help her with her household chores or homework.

The Appellant did not demonstrate she has substantial functional limitations in any of the other eligibility categories: Self-care, Receptive and expressive language, Learning, Self-direction, and Capacity for independent living.

The CMH witness stated that CMH deemed Appellant as a person with Serious Emotional Disturbance and authorized case management services to assist Appellant with transitioning to adult services when she turns ██████████ in ██████████ (Exhibit G). The CMH witness explained that Appellant would continue receiving at least case management services from CMH as a person with Serious Emotional Disturbance or as a person with mental illness.

The Appellant did not provide a preponderance of evidence that she met the Mental Health Code eligibility requirements for DD. As such she is not eligible for Managed Specialty Supports and Services provided through the [REDACTED] as a person with DD. The CMH's denial of Appellant's respite, community living supports and supports coordination services that were previously authorized under a determination of a person with developmental disability, was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly determined the Appellant was not eligible for developmental disability services through CMH.

IT IS THEREFORE ORDERED that

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

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

cc:

[REDACTED]

Date Mailed: 04/27/2010

***** 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.