

**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. 2010-28795 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]. [REDACTED] appeared on behalf of the Appellant who was present but did not testify. [REDACTED], attorney, represented the Department. Her witness was [REDACTED], manager, Access Services Center.

ISSUE

Did the Department properly deny the Appellant's request for supports coordination?

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] Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is enrolled in the Molina Health Plan. (Appellant's Exhibit 1)
3. [REDACTED] County Community Mental Health ([REDACTED] CCMH) is under contract with the Michigan Department of Community Health (Department) to provide mental health services to those who reside in the Appellant's geographic area.
4. Appellant lives with her father/guardian in [REDACTED], Michigan. He represents her today in seeking services to assist his daughter with her functioning in the community. Department's Exhibit A, p. 2 and See Testimony
5. The Appellant receives SSI and has been identified as a person with a Mood Disorder NOS, mild Mental Retardation and epilepsy. She has received no prior services from [REDACTED] CCMH. Department's Exhibit A, p.1

6. The Appellant takes medication, Depakote and Topamax, for her epilepsy under the supervision of her PCP without complaint or issue. Department's Exhibit A, p. 18
7. The Appellant's representative sought services for the Appellant as a developmentally delayed person even though he acknowledges that she functions on a high level. He is concerned for her future owing to his advancing age. Department's Exhibit A, p. 2 and See Testimony.
8. The Department established that the Appellant was not eligible for supports coordination for lack of medical necessity as demonstrated on both a telephone screening and face-to-face assessment conducted prior to hearing. Department's Exhibit A, p. 2, and (sub D) at p. 23 and Department's Exhibit B – throughout.
9. The Appellant is not a person with a serious mental illness. She is diagnosed with mild cognitive impairment. She is mobile and verbal. The Appellant participates in social activities, monitors her own schedule and is able to care for her basic needs. She does not drive and needs help with budgeting. Department's Exhibit B, p. 13 and See Testimony
10. The Appellant was found to have a substantial limitation in only two areas: learning and economic self sufficiency. Department's Exhibit B, p. 20.
11. The Appellant was advised on the denial of her service request by adequate action notice on ██████████. The Appellant's further appeal rights were explained therein. Department's Exhibit A, p. 4
12. The instant appeal was received by 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

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...

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.

For purposes of simplifying the application of the Mental Health Code definition to Appellant's request for services under development delay, in general, the Appellant must meet all four (4) criteria:

- 1) attributable to a mental or physical impairment or combination of mental and physical impairment;
- 2) that manifests before the person is 22;
- 3) that is likely to continue indefinitely;
- 4) that results in substantial functional limitations...

As applied to adult beneficiaries, the MCCMH utilized the criteria outlined in the Medicaid Managed Specialty Supports and Services Concurrent Waiver Program Contract FY 09 for the Michigan Department of Community Health (MDCH).

The Contract sets forth the following requirements for the MCCMH/Access Service Center in its servicing of potential clients:

Developmental Disability is defined in the Contract as:

Developmental Disability: As described in [] the Michigan Mental Health Code, a developmental disability means either of the following:¹

1. If applied to an individual older than five years, a severe, chronic condition that meets all of the following requirements.

- a) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- b) Is manifested before the individual is 22 years old.
- c) Is likely to continue indefinitely.
- d) Results in substantial functional limitations in three or more of the following areas of major life activities:

- 1) Self-care;
- 2) Receptive and expressive language;
- 3) Learning, mobility;
- 4) Self-direction;
- 5) Capacity for independent living;
- 6) Economic self-sufficiency.

e) 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. (Emphasis supplied)

2.

[See MCL 330.1100a(21)]

The evidence and the testimony established that the Appellant is a high functioning adult who suffers a moderate cognitive impairment as established following two recent reviews. Unfortunately, the Appellant has had a recent criminal justice interaction. She was sentenced to probation and ordered to attending counseling – all conditions she has adhered to. It was this event which caused the Appellant to seek assistance from her father. See Department's Exhibit B at page 5.

While the Appellant does not have a driver's license her representative admitted that she is familiar with the bus system and public transportation and knows how to navigate the city.

The Appellant's representative said her main problem is her inability to manage her money. He testified that as his age advances he has concern for her future welfare.

¹ The Contract reference to the Michigan Mental Health Code now appears at MCL 330.1100a(21).

However, the Appellant demonstrates ability to navigate the community (without a driver's license) and to function independently by way of cooking, cleaning, toileting independently, medication management, etc. The Appellant's representative said that the Appellant is a good mother to her son.

The Department's witness [REDACTED] testified that the Department did not dispute the onset of mild impairment before age 22 – however, it simply did not translate into impairment of three (3) or more limitations in life activities. She concluded that the Appellant was not eligible under "DD" standards.

On review, since the Appellant failed to demonstrate medical necessity² for services by showing a substantial limitation in at least three (3) areas of life activity (above) she is ineligible for DD services. The Appellant was encouraged to continue her sessions at [REDACTED] Clinic in outpatient therapy further achieving her anger management goals and learning life planning skills.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied supports coordination services to the Appellant.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 06/30/2010

² MPM, Mental Health [], medical necessity, §§2.5 A-D, pages 12 – 14, April 1, 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.