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. 2010-32475 CMH
Case No. [redacted]

[redacted],

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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. [redacted], attorney, represented the Department. Her witnesses were [redacted], MLSW (clinician) Access Center, and [redacted], assistant division director, PhD, Access Center. The Appellant was present and testified briefly.

ISSUE

Did the Department properly deny CMH specialty services for lack of eligibility?

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. (Appellant's Exhibit #1)

2. He is enrolled in [redacted] Health Plan. (Department's Exhibit A, p. 5)

3. On [redacted] the Appellant was screened by the PIHP Access Center. (Department's Exhibit A, p.1)

4. On [redacted] the Appellant was re-screened on a requested second opinion. (Department's Exhibit A, p. 1)

5. The Appellant was diagnosed with attention deficit disorder NOS and mood disorder NOS, on second opinion the Appellant was diagnosed with intermittent explosive disorder, mood disorder, attention deficit/hyperactivity disorder NOS and anxiety disorder NOS. (Department's Exhibit A, pp. 5, 10)

6. The Appellant reports a pre-exisiting condition of "Schizoid and schizotypal problems as well as anger issues." (Department's Exhibit A, pp. 5, 7, 10)

7. The Appellant is presently "open" with Professional Counseling Corporation and was scheduled to see the psychiatrist at that facility – but for unknown reasons did not follow through. (Department's Exhibit A, - throughout)

8. The Appellant's representative said that "PC [Professional Counseling] is not working. And that "CMH has denied Cory 3 times" and [she] did not know why. She said he has an "ability to play a different character." (*See* Testimony of [redacted])

9. The Appellant said that he "yelled at a CPS worker and they determined him to be a threat to society." (*See* Testimony of [redacted].)

10. [redacted] County Community Mental Health 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 through its Access Center. (*See* Testimony of [redacted])

11. The Appellant currently receives counseling services locally through his Medicaid Health Plan (MHP) – [redacted] Health Plan (*See* Testimony)

12. The Appellant was determined to lack a serious mental illness or substantial impairment in three or more primary aspects of daily living. (*See* Testimony of [redacted] and Department's Exhibit A, pp. 10-11)

13. The Appellant was notified of the negative action on [redacted]. (Department's Exhibit A, pp. 1, 12, 13)

14. The instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR) on [redacted]. (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

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…

Section 1915(c) of the Social Security Act provides:

> The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded…

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 and Support program waiver in conjunction with a section 1915(c) Habilitation Supports Waiver (HSW). St. Clair County Community Mental Health (the Department) contracts with the Michigan Department of Community Health to provide those services.

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 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 a CMH to the Department's Medicaid Provider Manual for determining coverage eligibility for Medicaid mental health beneficiaries.

The Department's Medicaid Provider Manual (MPM), Mental Health Chapter makes the distinction between the CMH responsibility and the Medicaid Health Plan (MHP) responsibility for Medicaid specialized ambulatory mental health benefits.

The MPM sets out the eligibility requirements as follows:

In general, MHPs are responsible for outpatient mental health in the following situations:	**In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:**
□ The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity 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 clinical (self/other harm risk) instability. □ 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). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.	□ 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 developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills). □ 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. □ 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.

MPM, Mental Health and [ ], Beneficiary Eligibility §1.6, July 1, 2010, page 3.

CMH Access Center witnesses [redacted] and [redacted] testified that CMH determined on clinical screening that the Appellant did not meet the eligibility standards for specialized and intensive mental health services provided through the CMH. Both clinicians remarked that the Appellant fell into the category for MHP responsibility.

The specific language relied upon by the CMH is underlined above and discussed here:

Mild and moderate symptoms -

The CMH does not dispute that the Appellant has a diagnosis. They determined his diagnosis to be ADHD NOS and/or [on second opinion] Intermittent explosive disorder NOS. The CMH position is that while the Appellant would benefit from participating in counseling services - in which he is currently enrolled – he does not need the intensity level found in their system. Dr. Seilheimer reports that the Appellant is not a danger to himself or others and that he denied substance use or abuse. (See Department's Exhibit A, p. 7)

While both of the Department witnesses opined that the Appellant is neither a danger to himself nor others, his representative ([redacted]) said that the Appellant is capable of "playing a different character and that he needs help."

On review there was no documentary support for a diagnosis of the "reported Schizoid and schizotypal problems." Psychologist Seilheimer identified an anger issue on second opinion.

The CMH is allocated general funds to meet its legislative mandate to serve the needs of those with serious mental illness – irrespective of Medicaid status. *See* MCL 330.1208 (1) and 330.1100c (6)

Because the CMH remains the entry point for mental health services (assuming future medical necessity) the Appellant is free to seek those services whenever he wants – so long as he is not receiving duplicate services elsewhere. In this case, the evidence preponderates that his impairment is mild and moderate and subject to the treatment rubric available through his MHP.

The Appellant has not preponderated his burden of proof that he is one afflicted with a serious mental illness. There was no evidence that he had a diagnosis of a serious mental illness or that he was a danger to himself or others.

The issue before this Administrative Law Judge is whether the St. Clair County Community Mental Health (SCCCMH) properly determined whether the Appellant's mental health services should be the responsibility of his MHP or the CMH. SCCCMH provided credible evidence that the Appellant meets the Medicaid Provider Manual eligibility requirements for Managed Specialty Supports and Services as provided through the MHP - not the CMH.

The CMH sent proper notice of service authorization denial. The Appellant did not provide a preponderance of evidence that he met the Medicaid Provider Manual eligibility requirements for Managed Specialty Supports and Services provided through the CMH.

DECISION AND ORDER

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

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: 7/27/2010

***** 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.