

**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. 2010-38713 CMH

Case No. ██████████

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 ██████████. ██████████
██████████, appeared on behalf of the Appellant. The Appellant was present and provided testimony.

██████████, appeared on behalf of ██████████
██████████, and ██████████
██████████ appeared as witnesses for the CMH.

ISSUE

Did ██████████ (CMH) properly authorize respite hours for Appellant?

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 Medicaid beneficiary receiving services through ██████████ (CMH).
2. CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH

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service area.

3. The Appellant is a ██████████ Medicaid beneficiary (DOB ██████████). The Appellant's most recent Axis I diagnoses, as given by her psychiatrist in an ██████████, medication review, are DSM 311 - depressive disorder, DSM 214.9 -attention-deficit/hyperactivity disorder, and DSM 313.81 - oppositional defiant disorder. (Exhibit 1, Page D).
4. The Appellant lives with her mother.
5. Appellant's current Individualized Plan of Service (IPOS) was authorized through ██████████. (Exhibit C, Page 3).
6. The Appellant's IPOS authorized psychiatric services, targeted case management, parental skills training, outpatient individual therapy, outpatient family therapy, and respite services. (Exhibit C, Page 3).
7. Appellant's Child and Adolescent Functional Assessment Scale (CAFAS) score improved 20 points from her initial assessment of 70 on ██████████, to 50 at her ██████████ assessment. (Exhibit F, Pages 3 and 4). Appellant's CAFAS results indicated an absence of severe impairments. (Exhibit F, Page 1).
8. In ██████████, the CMH began discussing with the Appellant's mother and Appellant closing her CMH enrollment, including respite, because the Appellant had made significant improvement. (Exhibit C, Pages 2 and 3).
9. On ██████████, the Appellant's mother filed a local appeal with the CMH to dispute termination of her CMH services. In her appeal letter the Appellant's mother stated that with regard to the termination, "...the medical I am okay with but not with taking away her counseling/respite... she doesn't trust many people with problems but tells for respite worker... everything... continue respite and counseling." (Exhibit B, Page 4).
10. A local level appeal process was undertaken by an appropriately trained CMH staff who had not been involved in the original termination decision. The appeal process involved concurrence in the appropriateness of the termination by ██████████, Appellant's psychiatrist. The appeal investigation determined that the Appellant's termination was proper, and effective ██████████. (Exhibit B, Page 1).
11. On ██████████, the CMH mailed the Appellant a letter informing her that the local level appeal determined the termination of services was appropriate. The letter indicated that the reason given by Appellant's mother for continuing respite services was for the Appellant to have someone to talk with that she trusted, but that the purpose of respite did

not include counseling. (Exhibit B, Page 1).

12. On ██████████, Appellant was sent an Advance Action Notice informing her she would no longer receive home-based therapy, medical services, and respite services from CMH. (Exhibit A, Page 1). The reason for a termination was stated as the service/support is not medically necessary. (Exhibit A, Page 1). Appellant's notice included a notice of hearing rights. (Exhibit 1, Page 2).
13. The Appellant's request for hearing was received by this office on ██████████ (Exhibit 1). In the request for hearing the Appellant's mother stated that she was okay with terminating the medical services, but not terminating the counseling/respite.

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 section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are 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.

CMH witness ██████████ testified that when she first began providing services to the Appellant the Appellant's mother did not exhibit positive parenting skills and the Appellant exhibited behavior problems. The CMH witness ██████████ further testified that as treatment progressed, Appellant's mother exhibited positive parenting skills. CMH witness ██████████ stated that Appellant showed progress including performing better in school and getting along better with her mother.

CMH witness ██████████, Appellant's respite provider, stated that although she was authorized to provide respite services, the actual service she was providing was more similar to community living supports services than to respite services. CMH witness ██████████ provided the example of initially going to Appellant's home and helping her do chores or homework, but as time progressed she took Appellant more into the community for community activities such as bowling and introducing the Appellant to the Big Sisters Program.

██████████ testified that he has known the Appellant since ██████████ and became her physician in ██████████. ██████████ said he was made aware of the discussions to transition the Appellant to her primary care physician to prescribe her

Vyvanse and Wellbutrin, and based on the progress made by the Appellant he was in support of the decision.

The Appellant's mother testified that since the CMH made the termination decision in ████████ her condition had deteriorated. The Appellant's mother explained that the Appellant's grades dropped from A's and B's to C's and D's. The Appellant's mother testified too that the Appellant stopped hanging out with her friends and the Appellant is withdrawn. Appellant's mother stated that on Mother's Day weekend the Appellant and her father had an altercation in which the police were called and the Appellant's relationship with her father had deteriorated, causing stressors on the Appellant. The Appellant's mother stated that respite services were significantly important for the Appellant because the respite worker was the person the Appellant would talk to and confide in. The Appellant's mother said that the Appellant used her respite worker as a person to confide in, and she does not trust any other counselor to confide in.

The Appellant said she recently made a cut mark on her wrist, not attempting suicide rather she was trying to relieve stress and frustration.

The CMH responded that Medicaid respite services do not include a counseling component. The *Medicaid Provider Manual, Mental Health/Substance Abuse* section articulates Medicaid policy for Michigan. It states with regard to respite services:

17.3.J. RESPITE CARE SERVICES

Services that are provided to assist in maintaining a goal of living in a natural community home by temporarily relieving the unpaid primary caregiver (e.g., family members and/or adult family foster care providers) and is provided during those portions of the day when the caregivers are not being paid to provide care. Respite is not intended to be provided on a continuous, long-term basis where it is a part of daily services that would enable an unpaid caregiver to work elsewhere full time. In those cases, community living supports, or other services of paid support or training staff, should be used. Decisions about the methods and amounts of respite should be decided during person-centered planning. PIHPs may not require active clinical treatment as a prerequisite for receiving respite care. **These services do not supplant or substitute for community living support or other services of paid support/training staff.** (Bold added by ALJ).

July 1, 2010, Page 110.

The CMH witness ██████████ testified that Appellant was authorized for respite services to temporarily relieve the Appellant's mother. CMH witness ██████████ explained that while it is confident that the Appellant has a good relationship with the respite worker, it is inappropriate for respite service funding to be used to provide counseling services, and the CMH cannot use respite service authorization to pay for counseling services between the respite worker and the Appellant. The Department's respite policy, as stated above prohibits the use of respite to supplant community living support or counseling services.

This Administrative Law Judge must follow the CFR and the state Medicaid policy, and is without authority to grant respite hours out of accordance with the CFR and state policy. The CMH provided sufficient evidence that it adhered to the CFR and state policy when not authorizing respite other than to provide temporary relief for the Appellant's mother. Further, the administrative law judge is limited to making a decision based on the information the CMH had at the time it decided to terminate the Appellant's services. The evidence in this case shows that at the time the CMH made a termination decision the Appellant had made significant improvements in the six years she had received CMH services. The Appellant, who bears the burden of proving by a preponderance of evidence that there was medical necessity for respite, did not meet that burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly terminated Appellant's CMH-provided services, including respite services.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

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

cc: ██████████
██████████
██████████

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Date Mailed: 9/28/2010

***** 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.