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

,
Appellant

_______________________/

Docket No. 2010-54288 CMH

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 . , Appellant's mother, appeared on behalf of the Appellant.

, Assistant Corporation Counsel, (CMH), represented the Department. , CMH Access Center Manager, appeared as a witness for the Department.

ISSUE

Did CMH properly deny authorization for physical therapy services 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 an Medicaid beneficiary who is enrolled in the health plan.
2. is a CMHSP.
3. Appellant has been receiving services from CMH since at based , when his family moved to (Exhibit G).

4. Petitioner's ██████, person-centered plan (PCP) recommended a physical therapy evaluation and physical therapy if medically necessary. (Exhibit E, page 2 of 14).

5. Appellant attends ████ elementary school where he receives general education, special education, occupational therapy, speech and language services, and resource room support. (Exhibit D).

6. Appellant received physical therapy services while in kindergarten but the physical therapy was dropped because he gets jumping as an exercise in his life skills class sixth. (Exhibit B).

7. The CMH reviewed the Appellant's person centered plan and noted there was no individualized education plan for the Appellant from the school or denial letter from the school advising the Appellant that the school would not provide physical therapy services.

8. As a result of not receiving supporting documentation that all other sources of physical therapy had been denied, the CMH Access Center denied authorization for physical therapy services. (Exhibit A).

9. On ██████, the CMH sent an Adequate Action Notice to the Appellant indicating his physical therapy services were denied. (Exhibit A).

10. The Appellant's request for hearing was received on ██████ (Exhibit B).

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. Macomb County CMH 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 Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5* makes the distinction the CMH is the payer of last resort for Medicaid covered services. The Medicaid Provider Manual sets forth the prohibition against paying for services that are provided by another entity, in pertinent part:

> **SECTION 3 – COVERED SERVICES**
>
> The Mental Health Specialty Services and Supports program is limited to the state plan services listed in this section, the services described in the Habilitation/Supports Waiver for Persons with Developmental Disabilities Section of this chapter, and the additional/B3 services described in the Additional Mental Health Services (B3s) section of this chapter. **The PIHP is not responsible for providing state plan covered services that MDCH has designated another agency to provide (refer to other chapters in this manual for additional information, including the Chapters on Medicaid Health Plans, Home Health, Hospice, Pharmacy and Ambulance**), nor is the PIHP responsible for providing the Children's Waiver Services described in this chapter.
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> *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, July 1, 2010, page 15.*

The CMH does not dispute that Appellant may have therapy needs. Rather, CMH representative stated that CMH is obligated to follow the Department's Medicaid policy and unless an Appellant can demonstrate that all other sources of payment or other providers of the services have been denied, the CMH cannot pay for the service, including physical therapy. CMH Access Center witness pointed out that when she learned of the physical therapy recommendation and Appellant's person centered plan she reviewed the Appellant's file and discovered there was no individualized education plan for the Appellant, and no written denial from the school district denying Appellant physical therapy services. CMH Access Center witness testified that without having the individualized education plan for the Appellant or documentation from the school district denying physical therapy, it was not possible to authorize physical therapy services for the Appellant.

The Appellant's mother testified that she had recently moved to and in the turmoil of the move she is not yet had an individualized education planning meeting for the Appellant with the school district. The Appellant's mother testified that although the Appellant is receiving occupational and speech therapy from the school, she and the school agreed that the Appellant would get some physical therapy-type jumping and exercises in his life skills class.

> **3.19 Physical Therapy**
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> ***
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> Physical therapy must be skilled (i.e., requires the skills, knowledge, and education of a licensed physical therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, registered occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.
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> ***
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> *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, July 1, 2010, page 20.*

The CMH representative responded that the state of Michigan provides Medicaid funding to schools so the schools may provide physical therapy to their students. Because it is expected that physical therapy be provided by schools, and there is no evidence that the Appellant has asked for and been denied physical therapy at his school, the CMH was proper to deny authorizing physical therapy.

The burden is on the Appellant to prove by a preponderance of evidence that physical therapy was denied at the school and any other resource. Because Appellant had not provided the required evidence, the Appellant did not meet his burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

> The CMH properly denied authorization for physical therapy services for Appellant.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

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

cc:

Date Mailed: 11/10/2010

***** 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.