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:

[redacted]

Appellant,
_____/

Docket No. 2010-54986 QHP
[redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant was represented by his mother [redacted]. The Respondent, [redacted], was represented by [redacted], Grievance Supervisor. [redacted] Medical Director, and [redacted], Registered Nurse and Clinical and Quality Review Specialist, testified as witnesses for the Respondent.

ISSUE

Did the Medicaid Health Plan (MHP) properly deny the Appellant's request for speech therapy?

FINDINGS OF FACT

The ALJ, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Respondent, PHP, is a Department of Community Health contracted MHP.

2. The Appellant is a [redacted] Medicaid beneficiary, who is enrolled in the Respondent MHP.

3. On [redacted], the MHP received a request for coverage for speech therapy for the Appellant. Included was a [redacted] Initial Speech Language Pathology Evaluation from [redacted],

recommending that the Appellant receive therapy two times per week. (Exhibit 1, pages 6-9)

4. On [redacted], the MHP sent the Appellant notice that the request for speech-therapy coverage was denied because there was no medical documentation to support that the Appellant's speech delay is related to a medical diagnosis. (Respondent's Exhibit 1, pages 10-12)

5. On [redacted], The MHP received a grievance from the Appellant's mother. (Respondent's Exhibit 1, pages 13-14)

6. A hearing was held on [redacted], and additional documentation was provided to the MHP to support the Appellant's request for speech therapy, including a prescription with the following diagnoses: dysarthria, dysphasia, and slurred speech. (Respondent's Exhibit 1, pages 19-27)

7. The MHP upheld its original denial based on a lack of a medical diagnosis to support the request for speech therapy. (Respondent's Exhibit 1, pages 19-27)

8. On [redacted], the Department received the Appellant's Request for Hearing.

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.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program,

or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Section 1.022(E)(1), Covered Services.
MDCH contract (Contract) with the Medicaid Health Plans,
October 1, 2009.

(1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

(a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
(b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
(c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
(d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
(e) The Um activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure
The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Section 1.022(AA), Utilization Management, Contract,
October 1, 2009.

As stated in the Department-MHP contract language above, a MHP "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent sections of the Michigan Medicaid Provider Manual (MPM) are as follows:

> **5.3 SPEECH THERAPY**
>
> The terms speech therapy, speech-language pathology, speech-language therapy, and therapy are used to mean speech and language rehabilitation services and speech-language therapy.
>
> MDCH covers speech-language therapy provided in the outpatient setting. MDCH only reimburses services for speech-language therapy when provided by:
>
> - A speech-language pathologist (SLP) with a current Certificate of Clinical Competence (CCC).
> - An appropriately supervised SLP candidate (i.e., in their clinical fellowship year [CFY]) or having completed all requirements but has not obtained a CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.
> - A student completing his clinical affiliation under direct supervision of (i.e., in the presence of) an SLP having a current CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.
>
> MDCH expects that all SLPs will utilize the most ethically appropriate therapy within their scope of practice as defined by Michigan law and/or the appropriate national professional association.
>
> **For all beneficiaries of all ages**, speech therapy must relate to a medical diagnosis, and is limited to services for:
>
> - Articulation
> - Language
> - Rhythm
> - Swallowing
> - Training in the use of an speech-generating device
> - Training in the use of an oral-pharyngeal prosthesis
> - Voice

For CSHCS beneficiaries (i.e., those not enrolled in Medicaid; only enrolled with CSHCS), therapy must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing the care of the beneficiary.

Therapy must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess the beneficiary for deficits, develop a treatment program and provide therapy).

Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family member, or caregiver) would not be reimbursed as speech therapy by MDCH.

For beneficiaries of all ages, therapy is **not** covered:

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.
- If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.
- If it is designed to facilitate the normal progression of development without compensatory techniques or processes.

- If continuation is maintenance in nature.
- If provided to meet developmental milestones.
- If Medicare does not consider the service medically necessary.

* * *

5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES
School-aged beneficiaries may be eligible to receive speech-language therapy through multiple sources. Educational speech is expected to be provided by the school system and is not covered by MDCH or CSHCS. Examples of educational speech include enhancing vocabulary, improving sentence structure, improving reading, increasing attention span, and identifying colors and numbers. Only medically necessary therapy may be provided in the outpatient setting. Coordination between all speech therapy providers should be continuous to ensure a smooth transition between sources.

Outpatient therapy provided to school-aged children during the summer months in order to maintain the therapy services provided in the school are considered a continuation of therapy services when there is no change in beneficiary diagnosis or function. Prior authorization is required before initiating a continuation of therapy.

Michigan Department of Community Health,
Medicaid Provider Manual,
Outpatient Therapy Section,[1]
July 1, 2010, pages 19-20.

The MHP's Medical Director testified that he reviewed the request sent on behalf of the Appellant, including the supporting and supplemental medical documentation, and the request was denied because there was no medical diagnosis to support it. He explained that the diagnoses noted by the Appellant's physician— dysarthria, dysphasia, and slurred speech—are, in fact, symptoms and not actual diagnoses. He stated that the medical records provided did not support a medical diagnosis as the etiology for the Appellant's speech issues. He further explained that the Medicaid Provider Manual mandates a medical diagnosis for coverage of speech therapy. And, in this case, because there was no medical diagnosis, the request for coverage of speech therapy had to be denied.

[1] The MHP refers this ALJ to the Practitioner Section of the Medicaid Provider Manual. However, it appears that the Outpatient Therapy section is more appropriate, and the sections are consistent with one another.

The Appellant's mother disagrees with the denial. She asserted that the dysarthria, dysphasia, and slurred speech are diagnoses and that the MHP should have granted the request for speech therapy. She further stated that the Appellant has had several ear infections, which have affected his hearing and impaired his speech.

The Medicaid Provider Manual clearly states that speech therapy must relate to a medical diagnosis. The documentation submitted indicated that the speech therapy was requested because the Appellant suffers from the following speech issues: dysarthria, dysphasia, and slurred speech. This ALJ tends to agree with the MHP's position that there is no medical diagnosis in this case, i.e., there is no underlying cause of the Appellant's speech issues. But even if the MHP's position is improper because dysarthria, dysphasia, and slurred speech could be considered medical diagnoses in of themselves, the Appellant's request was properly denied. The Medicaid Provider Manual clearly states that speech therapy is not covered when it is provided to meet developmental milestones or when the services are required to be provided by another public agency. Here, the documentation submitted indicated that the speech therapy was requested because the Appellant was not meeting developmental milestones, and the Appellant's mother testified that he is currently receiving speech-therapy services from the school district. Accordingly, the MHP's denial must be upheld.

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that the MHP's denial of the Appellant's request for speech therapy was proper.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 12/14/2010

***** 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.