

**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. 2010-12353 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 ██████████. The record was left open until ██████████ to receive the below referenced documents. ██████████ appeared on behalf of the Appellant. She had no witnesses. ██████████, program manager, represented the Department. His witnesses included ██████████, program supervisor, ██████████, case manager and ██████████, chore provider.

PRELIMINARY MATTER

At hearing the parties were instructed to forward two documents; Appellant Exhibit #2 – a letter from ██████████ is admitted over the objection of the Department.

The Department provided a copy of a psychological assessment of the Appellant conducted in ██████████ which was referenced in their proofs. This document is marked as Department's Exhibit B and was entered into the record.

ISSUE

Did the Department properly terminate the Appellant from services owing to a determination of program ineligibility?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

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1. The Appellant is a ██████████ disabled Medicaid and SSI beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with Lupus and the residuals of Hypoxia following a cardiac event in ██████████. She suffered significant complications. (See Testimony and Department's Exhibit B)
3. The Appellant's Date of Birth is ██████████. (Appellant's Exhibit #1)
4. The results of neuropsychological testing in ██████████ showed the Appellant to suffer "severe to profound impairments in all aspect of cognitive functioning without any residual pockets preserved ability." (Department's Exhibit B, p. 5)
5. The Appellant has been receiving CMH services for ██████████. (Appellant's Exhibit #1)
6. On ██████████, the Appellant's services [case management, supported employment, transportation and respite] were terminated by ██████████, case manager. (Department's Exhibit A, p. 3)
7. The effective date of termination was communicated as ██████████. In the written notice the Appellant's further appeal rights were provided. (Department's Exhibit A, p. 2)
8. The Department witness explained that the Appellant was terminated because she was discovered to not meet the age restriction for continued CMH services – even though developmentally disabled. She was referred to the MI Choice waiver program. (Department's Exhibit A, p. 3)
9. The instant request for hearing was received by the State Office of Administrative Hearings and Rules on ██████████.

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.

As applied to adult beneficiaries, the [REDACTED] as a Pre-paid Inpatient Health Plan (PIHP) utilizes 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 for the following requirements for the PIHP in its servicing of potential clients:

Severe and Persistent Mental Illness is defined in the Contract as:

Serious Mental Illness: As described in [] the Michigan Mental Health Code, a serious mental illness is a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American Psychiatric Association and approved by the MDCH and that has resulted in functional impairment that substantially interferes with or limits one or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbances, but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders are included only if they occur in conjunction with another diagnosable serious mental illness:

1. A substance use disorder
2. A developmental disorder
3. A "V" code in the diagnostic and statistical manual of mental disorders.¹

[See MCL 330.1100d3]

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:²

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.

¹ The Contract reference to the Michigan Mental Health Code now appears at MCL.1100d3.

² The Contract reference to the Michigan Mental Health Code now appears at MCL 1100a(21).

- 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.
2. If applied to a minor from birth to age five, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in item 1 if services are not provided. [See MCL 330.1100a(21)]

The proofs established that the Appellant, although significantly impaired, is not a person with a serious and persistent mental illness, but rather is a person with developmental disability onset at age 22. As stated above the law requires onset prior to age 22.

The proofs established that the Appellant was 22 years of age several months before her unfortunate cardiac event, resulting hypoxia and disability.

The Appellant's representative suggested a link to her Lupus diagnosis as the catalyst for the cardiac event and resulting disability – a condition dating back to the Appellant's birth. There was no medical support for this position.

The Appellant has failed to preponderate her burden of proof that she met eligibility requirements for continued CMH services as an individual with a developmental disability.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied continued services for lack of eligibility.

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

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CC:



Date Mailed: 3/4/2010

***** 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.