STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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. 2011-32429 CMH
Case No. 42921564

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 Tuesday, [redacted]. Appellant's mother, [redacted], appeared on behalf of the Appellant. [redacted], supports coordinator, appeared as a witness for the Appellant and provided testimony.

Ms. [redacted], Assistant Corporation Counsel, Macomb County Community Mental Health Authority (CMH), represented the Department. Dr. [redacted], CMH Access Center Manager, appeared as a witness for the Department. [redacted], CMH Access Center Supervisor also appeared as a witness for the Department.

ISSUE

Did the CMH properly deny the Appellant's request for speech therapy?

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 Macomb County Community Mental Health (CMH).

2. Appellant also has insurance through Great Lakes Health Care.

3. CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

4. The Appellant is a [redacted] old Medicaid beneficiary. The Appellant is diagnosed with Asperger/Pervasisve Development NOS or Rett's Disorder (Autism). The Appellant is mostly non-verbal and unable to express her needs/wants. (Exhibit D).

5. The Appellant lives with her mother. (Exhibit D, page 4).

6. The Appellant attends [redacted] Elementary School in a program for those who have been identified as Autistically Impaired (AI).

7. The Appellant has been receiving services through CMH since [redacted]. Authorized services include: assessments (including speech evaluation and behavioral assessment), treatment planning, supports coordination, behavioral services, and home care training. (Exhibits D and E).

8. On [redacted], Appellant underwent a speech language therapy evaluation by [redacted], Speech-Language Pathologist. [redacted] recommended that Appellant attend speech therapy twice weekly for thirty-five to forty-five minutes per session. (Exhibit G)

9. Appellant was given a prescription for the above recommended speech therapy and Appellant's mother submitted the request for speech language therapy to CMH. (Exhibit H).

10. The speech therapy request was reviewed but the CMH was required to deny the authorization request because Appellant was already receiving speech language therapy through her school and Medicaid policy requires that requested services be coordinated with school-based services. No evidence of coordination of these services was presented. (Exhibit A)

11. On [redacted], the CMH sent a notice to the Appellant's mother notifying her that the speech therapy request was denied. (Exhibit A).

12. The Michigan Administrative Hearing System received Appellant's request for hearing on [redacted]. (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) 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.*

The CMH/Department's witness testified that when the Access Center received the request for speech and language therapy, the request was reviewed and it was determined that Appellant was already receiving speech therapy services through her school. Because Medicaid policy requires that such services be coordinated, the request was denied as not medically necessary because there was no evidence that the services were coordinated with the school. There was no statement in the plan or case materials regarding how speech therapy goals and procedures through CMH are being coordinated with the goals and procedures through the

Appellant's school district. Neither the physician's script nor the physician's letter refer explicitly to services outside the school environment. Behavioral services are addressing challenging behaviors sometimes related to difficulty in communicating.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 3.20 (Speech, Hearing, and Language Therapy)* describes the state-plan service related to physical therapy as follows:

> Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO). Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.
>
> *Medicaid Provider Manual, Mental Health and Substance Abuse, Covered Services Section,, July 1, 2011, page 21.*

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.1 (Mental Health and Developmental Disabilities Services)* states that:

> Mental health and developmental disabilities services (state plan, HAB, and additional B3) must be:
>
> > Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MAPS], family courts, local health departments [LHDs], MIChoice waiver providers, school based service providers, and the county Department of Human Services [DHS] offices). [Emphasis added].
>
> *Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, July 1, 2011, page 8.*

The Appellant's mother testified that the speech therapy services Appellant is receiving through school amount only to one individual session lasting 15 minutes per week and one group session with eight other students. The Appellant's mother testified that she believed the services provided by the school were insufficient. [redacted], Appellant's supports coordinator, verified the amount and duration of the speech therapy services Appellant is currently receiving at school and opined that Appellant would benefit from further services.

Based on the Department's medical necessity criteria and covered services policy listed above, the arguments of Appellant's witnesses fail because there was no evidence that the services requested were being coordinated with the school. There is no official documentation

from the school regarding the goals of speech therapy being provided there and how those goals interact with the goals in the Appellant's PCP. There is no official description from the school of the progress of the Appellant in the school-based speech therapy and how this impacts the goals and procedures projected for the speech therapy which would be authorized by CMH if it agreed to the current request. And [redacted], PhD, Access Center Manager, testified that she has met twice with the program that provides speech therapy at Appellant's school and learned teachers are also trained to reinforce services from speech therapy throughout the day. Dr. [redacted] testified that she was much more comfortable with the services provided at the school following these meetings.

The Appellant bears the burden of proving by a preponderance of the evidence that additional speech therapy is a medical necessity in accordance with the Code of Federal Regulations (CFR). The Appellant did not meet the burden to establish medical necessity.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Appellant's request for speech therapy services.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: **07/11/11**

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.