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],

Docket No. 2011-32458 CMH
Case No. [redacted]

Appellant
_____/

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 [redacted]. [redacted] appeared on behalf of the Appellant who was present and testified. His witnesses included: [redacted] Disability Network, and [redacted] MLPC. Also in attendance was the Appellant, [redacted], Attorney, represented the [redacted] CMHSP (CMH). Her witness was [redacted], Access Center Manager.

ISSUE

Did the Department properly deny the Appellant's request for continued Speech Therapy and Occupational 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 [redacted]-year-old Medicaid beneficiary. (See Testimony)

2. He lives at home in a private residence with his biological parents. A biological sister lives nearby. (Department's Exhibit A, p. 30)

3. He is identified as a person with cognitive impairment and ADHD. He is reported to have a short attention span. (Department's Exhibit A, p. 1)

4. He presents with decreased range of motion in his hips, knees and ankles that affects posture, balance and coordination skills. (Department's Exhibit A, p. 1)

5. The Appellant has received services through the [redacted] CMHSP (MCCMH) since [redacted], including: assessments, treatment planning, supports coordination, speech and language services, occupational therapy,

physical therapy and CLS. His parents have received respite care services and home care training. (Department's Exhibit A, p. 1)

6. The Appellant currently attends [redacted] in [redacted] school district, where he spends the majority of his time at various job sites. (Department's Exhibit A, p. 1)

7. There was no evidence[1] of achieving speech related goals in his person centered plan or examples of coordination with the school system's IEPC speech related goals. (Department's Exhibit A, pp. 3, 48-60 and 79-96)

8. There was no evidence of achieving OT related goals in his person centered plan or examples of coordination with the school system's IEPC OT related goals. (Department's Exhibit A, pp. 3, 48-60 and 79-96)

9. There were physician drafted prescriptions for speech therapy and occupational therapy but neither prescription indicates the division of services between the school or the community. (Department's Exhibit A, pp. 3, 5, 67, 77)

10. On [redacted], the Appellant requested 214 units of continued Occupational Therapy which was reviewed by the Department and denied for lack of medical necessity. (Department's Exhibit A, p. 7)

11. On [redacted], the Appellant requested 54 units of continued speech therapy which was reviewed by the Department and denied for lack of medical necessity. (Department's Exhibit A, p. 7)

12. On [redacted], the Department sent the Appellant's guardian an adequate action notice advising him of the denial and his further appeal rights. (Department's Exhibit A, pp. 7-9)

13. The instant request for hearing was received by the Michigan Administrative Hearing System on [redacted]. (Appellant's Exhibit #1)

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

[1] At "Goal #2" in the Appellant's Speech and Language quarterly report [from *Developing Connections*] dated [redacted], there was one reference of "slightly better" in one of his assessed objectives. *See* Department's Exhibit A, page 65.

> 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

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…

Section 1915(c) of the Social Security Act provides:

> The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded…

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 and Support program waiver in conjunction with a section 1915(c) Habilitation Supports Waiver (HSW). The [redacted] Community Mental Health SP contracts with the Michigan Department of Community Health to provide those services.

While it is axiomatic that Medicaid is the payer of last resort the CMH remains the entry point for treatment of serious mental illness. The service criteria for this capitated provider is medical necessity[2] under the Medicaid Provider Manual:

[2] Medicaid Provider Manual (MPM) at §2.5 *et seq*, July 1, 2011, pages 11-13

> 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. However, it is expected that the PIHP will assist beneficiaries in accessing these other Medicaid services. (Refer to the Substance Abuse Section of this chapter for the specific program requirements for substance abuse services.) It is expected that PIHPs will offer evidence based and promising practices as part of the Medicaid covered specialty services where applicable. PIHPs shall assure that these practices are provided by staff who have been appropriately trained in the model(s) and are provided to the population for which the model was intended. (Emphasis supplied)
>
> MPM, §3, Mental Health [ ] July 1, 2011, p. 15

Furthermore, the MPM requires coordination of services between relevant service providers to assure avoidance of duplicated effort:

> **[MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES]**
>
> Mental health and developmental disabilities services (state plan, HSW, and additional/B3) must be:
>
> - Provided under the supervision of a physician, or other licensed health professional whose profession is relevant to the services being provided. This includes professionals who are licensed or certified in Michigan in a human services field typically associated with mental health or developmental disability services…
> - Provided to the beneficiary as part of a comprehensive array of specialized mental health or developmental disabilities services.
> - Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MIChoice waiver providers,

> school-based services providers, and the county Department of Human Services [DHS] offices). . . [Emphasis supplied]
>
> MPM, §2.1, Mental Health [and DD Services], July 1, 2011, page 8

[**OCCUPATIONAL THERAPY]**

> It is anticipated that therapy will result in a functional improvement that is significant to the beneficiary's ability to perform daily living tasks appropriate to his chronological developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.
> ….
>
> MPM, §3.17, Occupational Therapy, *Supra*, page 19

[SPEECH THERAPY]

> 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. Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a certified speech language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. 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.
> ….
>
> MPM, Speech Therapy, §3.20, *Supra*, page 21

The Department witness, [redacted], testified that the requested hours of OT and Speech Therapy were denied because there was no supporting evidence to demonstrate improvement in the Appellant's condition within a reasonable amount of time and no indication that the Appellant's goals on PCP were being met under the rubrics of Speech Therapy and OT.

Furthermore, she added that there was no evidence of coordination between the school system and the CMH to guard against duplication of service.

[redacted] said she based her decision on a review of medical records submitted on EMR. The Appellant's witness [redacted] said that she maintained contact with the Appellant and his school system on a monthly basis and that progress notes were made. However, they were not present in the record before the ALJ.

The Appellant's guardians testified that the Appellant's cognitive ability is greater than his expressive ability and that they are looking more to "assistive technology" as opposed to focusing on his ability to properly pronounce words. They said they want him to be able to function safely and independently in the future and that the Appellant requires structure and routine, through the receipt of Speech Therapy and OT, or he will show signs of regression.

The parents stated further that they had dedicated their lives to the Appellant's care and skill improvement. They admitted, however, that the reports from Developing Connections were a poor representation of his potential.

On review, the evidence in this record did not support a conclusion that the Appellant had enjoyed sustained improvement within a reasonable timeframe through the use of OT and Speech Therapies – as evidenced in the record submitted for hearing. *See* Department's Exhibit A – throughout and Appellant's Exhibit #1.

The Appellant failed to preponderate his burden of proof that OT and Speech Therapies were a medically necessary service or that the Department erred in denying the request for continued grant of service hours/units.

The Department's argument that the Appellant's treatment to date lacked durability was compelling and tracked the non-achievement of goals as presented in his person centered planning. The CMH must be able to rely on accurately presented records to measure the relative success or failure of their programs.

If the Appellant's guardians have new instruments or theories from which the Appellant might be measured they need to share this information with the CMH and then ensure coordination of effort between the school system and the community.

The Department remains the portal for psychiatric services in [redacted] and the MPM requires that they offer "evidence based practices as part of their specialty services where applicable." Based on today's testimony presumably other evidence based treatment practices bode for discussion and review between the parties.

The Appellant failed to preponderate his burden of proof that the requested therapies [OT and Speech Therapy] should be continued by the CMH as effective and medically necessary services.

The Department's action was proper when made.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied OT and Speech Therapies.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 9/8/2011

***** 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.