

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-35750 CMH

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. The Appellant's mother was present at hearing. ██████████ served as the Appellant's representative.

Attorney ██████████ represented the CMH. ██████████, Access Center Supervisor, was present and testified on their behalf.

ISSUE

Did CMH properly determine the Appellant does not meet services eligibility criteria as a person with developmental disabilities?

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 ██████ year-old Medicaid beneficiary who resides with his mother and brother in the family home.
2. ██████████ Community Mental Health is the Community Mental Health (CMH) which is responsible for providing Medicaid-covered mental health and developmental disability services to eligible recipients in its service area.
3. The Appellant is diagnosed as a person with Autism.
4. The Appellant had been a services recipient since the age of four years.
5. Following his most recent assessment, completed by JOAC, it was determined the Appellant no longer met service eligibility criteria as a developmentally disabled child.

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6. JOAC notified the Access Center of its determination and a notice of services termination was sent to the Appellant's mother.
7. The Appellant requires assistance with activities of daily living for self care.
8. The Appellant is enrolled in special education at [REDACTED] and utilizes the resource room as well as mainstream classroom. He has an aid assigned to be with him in the main stream classroom.
9. The Appellant's receptive and expressive language abilities have improved substantially in the last year or more.
10. The Appellant has some slurred speech. He can make his needs known, express preferences and can follow 2 step directions.
11. The Appellant does not have mobility impediments.
12. The Appellant determines his own activities in age appropriate context, i.e. watching a movie, computer use.
13. The Appellant has improved in his danger/safety awareness in the last year. He can participate in chores with reminders.
14. The Appellant's behaviors in the community have improved, although he may still exhibit some inappropriate comments and requires supervision.
15. The CMH notified the Appellant's mother via Adequate Action Notice that the Appellant's case management services would be terminated due to not meeting eligibility requirements for persons with developmental disabilities.
16. The CMH recommended the Appellant be evaluated for continued services as a child with a serious emotional impairment.
17. The Appellant's mother declined to allow the Appellant to be evaluated for services eligibility as a child with a serious emotional disturbance.
18. The Appellant requested a formal administrative hearing [REDACTED].

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 she 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 sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. Macomb County Community Mental Health contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

In performing the terms of its contract with the Department, the PIHP must apply Medicaid funds only to those services deemed medically necessary or appropriate. The Department's policy regarding medical necessity provides as follows:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, October 1, 2009

Denial of CMH Developmental Disability Services

As noted above the *MDCH/CMHSP 2008 Managed Specialty Supports and Services Contract, Section 3.3 and Attachment 3.1.1*, Section III(a) Access Standards directs a CMH to the Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter* for determining coverage eligibility for Medicaid beneficiaries. The text of the introductory paragraph of Medicaid Provider Manual (MPM) Section 1.6 states that it provides guidance to PIHP's regarding eligibility for a person with a developmental disability.

However, a review of the chart provided in MPM 1.6 (text omitted in this Decision and Order) demonstrates that while it is instructive on eligibility for people with mental illness, it does not specifically set forth any eligibility guidelines for determining whether a person with physical and/or cognitive limitations meets a threshold or simply stated, qualifies for services as a developmentally disabled person. In this case the CMH used the definition of developmental disability found in the mental health code. Normally the MDCH/CMHSP contract identifies the controlling authority. Here, the *MDCH/CMHSP Managed Specialty Supports and Services Contract, Attachment 3.1.1*, (contract) instructs that the use of the Michigan Mental Health code is only to be used if the individual seeking eligibility is NOT eligible for Medicaid. However, the definition section of the contract contained the same definition for developmental disability as the Michigan Mental Health Code, thus it appears appropriate to rely on this definition when making eligibility determinations.

The Mental Health Code definition, also found in the definition section of the contract states:

(21) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

- (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- (ii) Is manifested before the individual is 22 years old.
- (iii) Is likely to continue indefinitely.
- (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.

- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(v) 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.

MCL 330.1100a

For purposes of simplifying the application of the Mental Health Code definition to Appellant's facts, in general, the Appellant must meet four criteria: 1) a mental or physical impairment, 2) manifestation before age 22, 3) the impairment is likely to continue indefinitely, and 4) the impairment results in substantial functional limitations in three or more areas of major life activity.

There is dispute between the parties regarding whether the Appellant meets the criteria. It is stipulated the Appellant is substantially functionally limited with self care. It is stipulated that the Appellant is diagnosed within the autism spectrum disorder continuum. Additional criteria must be considered. The additional criteria include a manifestation of the impairment prior to age 22, which he does meet. Although it is not stipulated as to whether the impairments are likely to continue indefinitely, that is a dispute about the manifestation of functional impairments. It is not disputed that the Appellant is diagnosed with Autism and that this condition is expected to continue. Finally, it must be established that the impairments or combination of impairments result in substantial functional limitations in three or more areas of major life activity. The last portion of the criteria/definition is in dispute between the parties.

The seven areas of functioning contained in the definition of a major life activity are self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living and economic self sufficiency.

Self Care

It is stipulated between the parties the Appellant is substantially functionally limited in this major life activity, thus no discussion is necessary.

Receptive and Expressive Language

The evidence regarding receptive and expressive language illustrates the Appellant has improved, as is expected in anyone being measured from age 4 to age 9. Where the Appellant was previously non-verbal, he is now able to make his needs and desires known. He can express preferences and speaks in sentences. There is uncontested evidence in the record his speech is slurred. He is getting speech therapy at school. There is a recommendation from his doctor that he continue getting speech therapy. No specific speech deficits are noted

by this doctor in the letter recommending continued speech therapy, however, the testimony from the Appellant's mother that his speech is slurred stands as uncontested evidence. This is evidence of a deficit, however, is inadequate to establish the Appellant still has a substantial functional limitation with receptive and expressive language.

Learning

The CMH and the Appellant's mother dispute whether the Appellant has a substantial functional limitation with respect to learning. He is enrolled at [REDACTED] and has special education services and some mainstream classroom time as well. When in the mainstream classroom, the Appellant has an aid assigned to be with him one on one according to undisputed testimony from his mother. He has social work services, a special education teacher assigned to him in addition to his aid and is reminded to use the bathroom because he will soil himself without self care assistance. He has a behavior plan in place as well. The CMH presented evidence the Appellant is mainstreamed at school. The witness testifying on behalf of the CMH had not reviewed the Appellant's IEP prior to hearing. There was no evidence in the record the IEP was considered by the person who did perform the assessment on behalf of JOAC or had knowledge of the services the Appellant receives in the learning environment. This ALJ finds the evidence of supports he has in place in the learning environment demonstrates the Appellant has a substantial functional limitation in this major life activity.

Mobility

Whether the Appellant has a substantial functional limitation with mobility is not in dispute. He does not.

Self Direction

Age appropriate self direction must be considered in assessing for this major life activity. Here, there is uncontested evidence the Appellant is able to and does use a computer. He enjoys watching movies, in fact, there is some evidence he can fixate on certain aspects of movies. He may require re-direction from certain activities or repetitive behaviors due to his autism. He also engages in disruptive behaviors such as temper tantrums, frustration in completing a task, talking to himself and playing the television too loudly. He will argue with adults and refuse adult requests and deliberately annoy other people. His mother and representative assert his challenging behaviors are all attributable to his diagnosis of Autism. The CMH asserted an evaluation for serious emotional disturbance could be performed to determine whether he meets service eligibility criteria. There is some evidence of record the Appellant may be diagnosed with ADHD, however, this AXIS II diagnosis was deferred at the most recent assessment. This ALJ finds there is evidence of challenging behaviors, however, it is not clearly demonstrated this is the result of a diagnosis of Autism. In other words, attributable to the diagnosis under which he is being evaluated for service eligibility. Certainly some of the behaviors pointed to as challenging could be resultant from a serious emotional disturbance, or Autism, or simply perpetuated from young childhood because the Appellant has found them effective in getting more of what he wants. This ALJ finds there is a deficit in

this major life activity; however, there was insufficient evidence of record to find the Appellant has a substantial functional limitation in this area attributable only to a diagnosis of Autism.

Capacity for Independent Living

Given the Appellant's age, a full and final determination concerning the Appellant's functional status in this major life activity cannot be made at this time. ██████ year old children are not left without supervision normally, thus a determination about independent living skills is limited to age appropriate measures. It can be said that he has made improvements in age appropriate skills which would be considered, such as safety awareness, picking up after himself, making a snack such as a sandwich. He has also reduced his elopement behavior as previously noted in the evaluation/behavior assessments.

Economic Self-Sufficiency

Given the Appellant's age, this cannot be measured at this time to determine whether he has a substantial functional limitation in this major life activity.

Summary

The credible and substantial evidence of record establishes the Appellant does not meet the definition of a developmentally disabled person under the Michigan Mental Health Code. He does not have a substantial functional limitation in at least 3 of the 7 major life activities contained in the statutory definition, thus does not meet services eligibility standards.

DECISION AND ORDER

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

The Appellant does not meet the Michigan Mental Health Code eligibility requirements for developmentally disabled services provided through the CMH.

IT IS THEREFORE ORDERED that:

The CMH's termination of services is UPHELD.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:



Date Mailed: 8/30/2011

***** 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.