IN THE MATTER OF

███████ ,

Appellant

_____/

Docket No. 2011-4162 CMH
Case No. 84882150

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 ██████████. ██████████, Appellant, appeared on his own behalf. ████████████████████████ ██████████ (CMH), appeared on behalf of the CMH. ██████████████████████████████, appeared on behalf of the CMH.

ISSUE

Whether the CMH acted to resolve the Appellant's recipient rights complaint as required by the Code of Federal Regulations (CFR)?

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 █████ ███████████████████████ (CMH).

2.   The Appellant lives in an adult foster care setting.

3.   The Appellant filed a grievance that was received by the CMH on ████████ ███ . Exhibit 1.

4.   The Appellant and the CMH staff attempted to work out a resolution to the Appellant's grievance concerns, but a resolution was not reached until 74 days after the Appellant's grievance was received. Exhibit 3.

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) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) HSW. Services are provided by a CMH pursuant to its contract obligations with the PIHP/Department.

The Code of Federal Regulations require that a fair hearing be held if the CMH fails to take an action in a timely manner. 42 CFR 438.400 and 42 CFR 438.408. The state of Michigan established 60 days as the time parameters for timely action.

The CMH acknowledged that it had not reached a final resolution of the Appellant's grievance until 74 days, surpassing the timeliness expectation by two weeks. Exhibit 3. The CMH established that it had provided a notice of hearing to the Appellant based on its failure to reach resolution within 60 days. The CMH properly issued the notice of a right to hearing in accordance with 42 CFR 438.400 and 42 CFR 438.408.

During the hearing the CMH established through competent evidence that it had taken an action based on the concerns expressed by the Appellant and had made three decisions as part of that resolution. Exhibit 3. The resolution of Appellant's recipient rights grievance did not involve a suspension, termination, or reduction in services and therefore this administrative law judge does not possess jurisdiction to order the CMH to take any further actions.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH acted to resolve the Appellant's recipient rights issue.

IT IS THEREFORE ORDERED that:

The CMH's action is AFFIRMED.

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Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 1/6/2011

*** 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.