**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:

[redacted]
**Appellant**
_____/

**Docket No.** 2011-4695 CMH
**Case No.** 26466228

## 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. She had no witnesses. [redacted], represented the Department. Her witness was [redacted].

## ISSUE

Did the Department properly deny (SLP) speech services to the Appellant?

## 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 [redacted] Medicaid beneficiary. (Appellant's Exhibit #1)

2. He is identified as a person with autistic disorder and seizure disorder. He has received services since [redacted] which include: assessments, treatment planning, supports coordination, speech and language services, community living supports (CLS) and home care training. (Department's Exhibit A, p. 1)

3. The Appellant requires physical assistance with medication administration and housekeeping. He requires complete assistance with neighborhood mobility and use of community resources. He is able to verbalize his wants and needs – but not at an appropriate age level. (Department's Exhibit A, p. 1)

4. The Appellant currently attends [redacted] classes for the autistically impaired where he receives speech services and OT. He receives SLP four days a week at [redacted] Classroom. According to his PCP he also received SLP in a

group setting once weekly for 20 minutes at [redacted]. (Department's Exhibit A, p. 1)

5. The Department's Pre-Hearing summary states that a physician letter reports that the Appellant would benefit from a continuation of the "special speech therapy classes he is taking" then refers to a physician prescription. No such letter appears in the Summary (Sub A – J). However, the prescription from [redacted] recommends speech therapy for a year 1 – 2 x per week. See Department's Exhibit A Sub G.

6. On [redacted], the Department sent the Appellant an adequate action notice advising him of the denial of SLP as not medically necessary. His further appeal rights were contained therein. (Department's Exhibit A, Sub A, pp. 6 – 8)

7. The instant request for hearing was received by the State Office of Administrative Hearings and Rules 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 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] SP contracts with the Michigan Department of Community Health to provide those services.

While it is axiomatic that services are coordinated between agencies the CMH remains the entry point for treatment of serious mental illness, developmental disability or substance abuse. The service criteria for this capitated provider is medical necessity under the Medicaid Provider Manual:

> **[ ] 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.

## [ ] 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
- Documented in the individual plan of service.

****

## [ ] PIHP/CMHSP DECISIONS

Using criteria for medical necessity, a PIHP/CMHSP may:

Deny services that are:

- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
- experimental or investigational in nature; or
- for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or

■ Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

> A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. (Emphasis supplied)
>
> **MPM, Mental Health [ ];**
> **§2.5 *et seq*, October 1, 2010, pp. 11-13**

***

The Department witness, [redacted] testified that SLP was denied for lack of evidence on coordination of services and goals – and how those goals would interrelate with the PCP. On review of the Department's Exhibit the ALJ saw reference to medical necessity and goals at pages 20, 21 and 34. Medical necessity was demonstrated and supported in the record.

Admittedly, the concept of coordination could benefit with more input from the school in terms of identifying how the Appellant's goals would be achieved through home based drill, the school and the community.

The Appellant's [redacted] testified that the Appellant has made significant progress in his speech – but that the time provided by the school is inadequate. She said he needs one on one speech therapy as a tool to reinforce what is learned in school.

On review of the evidence the ALJ found reference to coordinated SLP. The ALJ is not aware of any special formula to prove coordination of services beyond that which was provided today.

The Department's position was hurt by the omission of a listed exhibit supposedly offered at Sub H which was purported to demonstrate a lack of medical necessity.[1]

Because the remaining evidence supported the broader idea of medical necessity and shared services for the Appellant and SLP – I find for the Appellant based on this record.[2]

On review, the proofs demonstrated that continued SLP for the time period of [redacted], through [redacted], was medically necessary to permit the Appellant to achieve age appropriate independence in ADLs and speech - and to further demonstrate his capacity to meet these goals.

.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly denied SLP services.

**IT IS THEREFORE ORDERED** that

[1] There was no letter from a physician in the exhibit.
[2] See §2.1, MPM, [Program Requirements] Mental Health/Substance Abuse, at page 8, Oct. 1, 2010

The Department's decision is REVERSED.

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

cc: [redacted]

Date Mailed: 1/11/2011

***** 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.