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:

	Docket No. 2011-48460 CMH , Case No. 39476455
Appel	lant/
DECISION AND ORDER	
	s before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon t's request for a hearing.
	represented the Appellant. Appellant's parents, and peared and testified on Appellant's behalf.
Attorney Authority (Cl and	represented the County Community Mental Health MH). Family Services Director, Living Services, Inc., case worker, appeared as witnesses for the Department.
<u>ISSUE</u>	
Did th	e CMH properly deny the Appellant's request for residential placement?
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 an experimental year old Medicaid beneficiary, born control of the County Community Mental Health (CMH) under the Children's Home and Community Based Waiver. (Exhibit A, p. 14)
2.	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.
3.	The Appellant was diagnosed with autism at the age of months. (Exhibit A, p 4). Appellant also has diagnoses of anxiety disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, obsessive compulsive disorder. (Exhibit I, tab R)

- 4. The Appellant has Blue Cross Blue Shield and Great Lakes Health Plan Medicaid HMO medical insurance. (Exhibit A, p 5)
- 5. The Appellant lives at home with his parent's and five other siblings, one of which also is diagnosed with autism. (Testimony)
- 6. The Appellant was hospitalized at property of the Appellant was h
- 7. The Appellant last attended the School for Students with Autism in Michigan. (Exhibit III, tab G). Appellant is currently not in school. (Testimony)
- 8. The Appellant has been receiving services through Living Services, Inc. since Course Coursell Cours
- 9. On or about Appellant's parents requested residential placement for Appellant due to his self injurious behaviors. (Exhibit A, p 9)
- CMH denied the request for residential placement because it determined that such placement was not medically necessary and that Appellant's needs could be met in a less restrictive environment. (Exhibit A, p 12)
- 11. On the third their request for residential placement was denied. (Exhibit A, pp 10-17). A Request for Hearing was completed by Appellant's attorney on (Exhibit A, p 2)
- 12. The Tribunal received Appellant's request for hearing on (Exhibit A, pp 1-2)

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

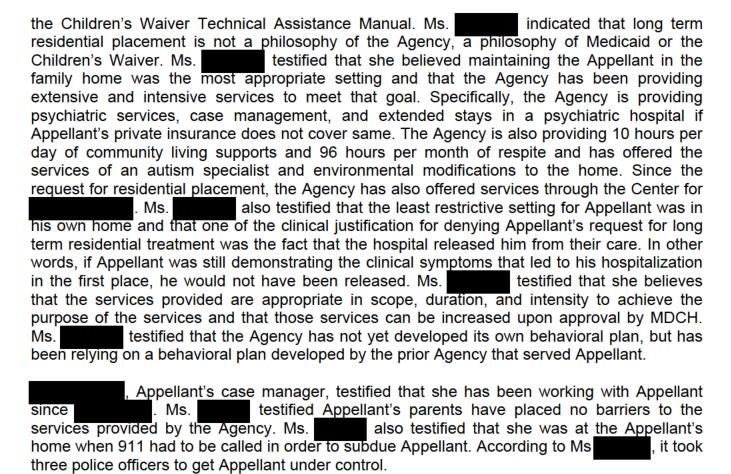
Section 1915(b) of the Social Security Act provides:

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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

, Family Services Director at Living Services, Inc., the contractor providing services for Appellant, testified that, in her opinion, long term residential placement is not a covered service under the Children's Waiver per both the Medicaid Provider Manual and



The Department's Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Sections 2.5.C and 2.5.D provide:

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting.
 Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and

 Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies. (Emphasis added)

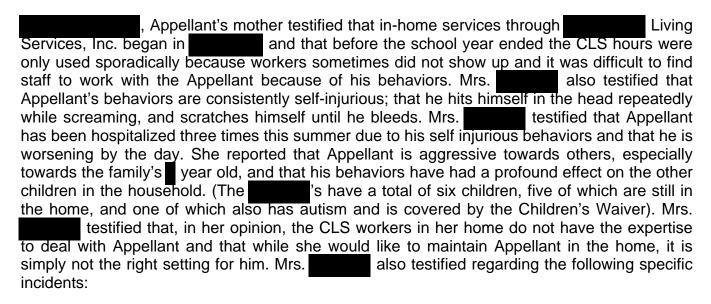
2.5.D. PIHP DECISIONS

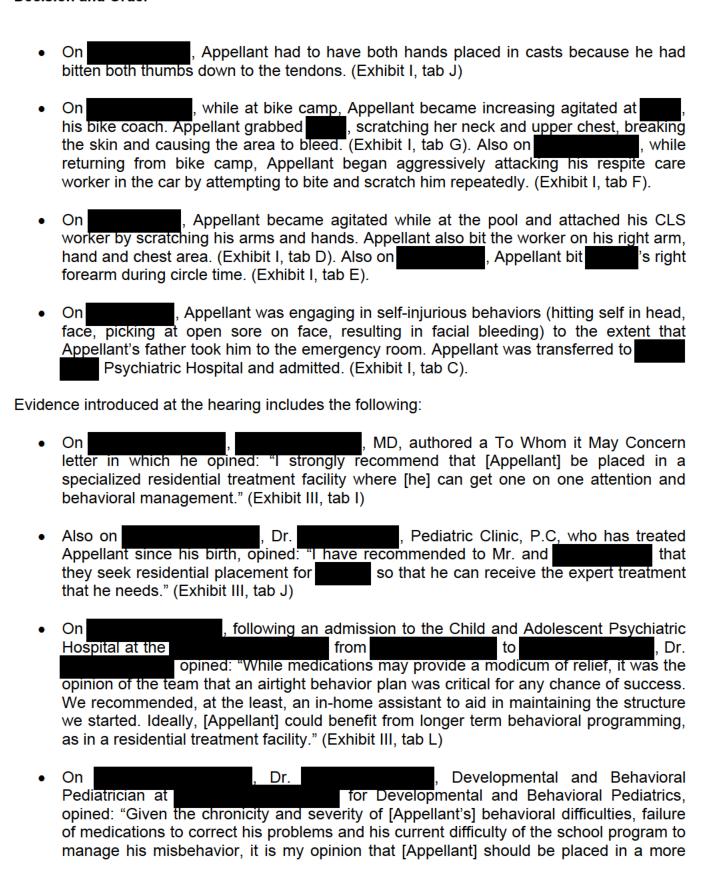
Using criteria for medical necessity, a PIHP may: Deny services that are:

- 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, lessrestrictive 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.

Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, July 1, 2011, pages 13-14.





structured, intensified and experienced educational setting, namely, a residential facility that can provide an intensive behavioral intervention program." (Exhibit III, tab K)

- In ______, Appellant underwent a reevaluation at the ______ Autism and Communication Disorders Center ______ ACC) because of his parent's concerns about his lack of academic process as well as his continued physical aggression towards others. The evaluation included testing, interviews, and a school observation. In conclusion, the authors of the report concluded, "To ensure the provision of appropriate services and to ensure [Appellant's] safety, as well as the safety of those around him, we recommend consideration of a residential placement designed to meet the needs of individuals with significant developmental disabilities." (Exhibit III, tab G)
- On "supervised one-on-one care, and he cannot be safely or properly maintained in the home or at school. He should be placed in a structured twenty-four hour a day residential treatment behavior program that caters to an ABA model of learning." (Exhibit III, tab A1). Dr. has been treating Appellant since he was two years old.
- On _____, Dr. ____, opined that Appellant needs, "A supervised one-on-one residential treatment facility . . ." (Exhibit V, tab C)

Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant, specifically his own home. Clearly, Appellant's placement in his own home is less restrictive than any residential placement. Furthermore, as noted above, "Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided." Here, Appellant has only been receiving services in his home since clearly been many difficulties, it cannot be said at this time that this less restrictive level of treatment has been unsuccessful. It is likely that Appellant will require increased services, especially if he is not in school, and should benefit from the development of a behavioral plan. Likely, Appellant will require the approval of 24 hour per day/7 day per week community living supports in the home.

Furthermore, based on the Department's covered services policy, Section 14 of the Medicaid Provider Manual, long-term residential placement is not a Medicaid covered service under the Children's Waiver. Additionally, long-term residential placement is not a covered service under the Children's Waiver Technical Assistance Manual and it does not appear as a covered service on the Children's Waiver application. And while Appellant correctly points out that Children's Waiver services are simply an enhancement to regular Medicaid services, which contemplate inpatient services, those services cannot be provided to Appellant at this time through the Children's Waiver because, as discussed above, Appellant does not meet the medical necessity criteria for residential placement.

Finally, this Administrative Law Judge must base his decision on information the Department had on hand when the denial of long-term residential placement was made. Hence, information provided by the Appellant after , and events occurring after that date, such as subsequent hospitalizations, cannot be a basis for the decision in this matter. The Agency, of course, is free to consider that information and revisit their denial at any time.

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

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Robert J. Meade Administrative Law Judge for Janet Olszewski, Director Michigan Department of Community Health



Date Mailed: <u>10/07/2011</u>

*** 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.