

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BENEFIT SERVICES DIVISION
P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 334-9505

IN THE MATTER OF

██████████
Appellant

Docket No. 2011-51790 CMH
Case No. 77714413

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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 began on ██████████. The hearing was continued on ██████████ and on ██████████. Attorney ██████████ appeared on behalf of Appellant, ██████████, Appellant's mother, ██████████, Appellant's grandmother, and Dr. ██████████ appeared as witnesses for the Appellant.

██████████, Fair Hearings Officer, ██████████ Community Mental Health Authority (CMH or Department), represented the CMH. ██████████, ██████████, and ██████████ appeared as witnesses for the Department.

ISSUE

Did CMH properly determine the Appellant was not eligible for CMH services?

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 ██████████-old male, born ██████████. (Exhibit B, p 1).
2. ██████████ CMH is responsible for providing Medicaid-covered services to eligible recipients in its service area.
3. The Appellant has been diagnosed with Bipolar Disorder NOS with Psychotic Features; Borderline Intellectual Functioning; Attention Deficit Hyperactivity Disorder; Specific Learning Disability - Mathematics Disorder; Major Depressive Disorder with Psychotic Features, Recurring; Autistic Disorder; Mild Mental Retardation; and Narcissistic Personality

Disorder. (Exhibit D, p 9; Testimony).

4. The Appellant is being prescribed the medications Singulair, Concerta ER, Seroquel, and Depakote ER by either his primary care physician or his psychiatrist. (Exhibit D, p. 4).
5. Appellant lives with his mother in an apartment in ██████ Michigan. (Exhibit B, p 8).
6. Appellant is a high school special education graduate. Appellant's eligibility for special education services was as an Emotionally Impaired student with a secondary eligibility of Otherwise Health Impaired and Specific Learning Disabled student. Learning disabilities were noted in mathematics problem solving and mathematics calculations. (Exhibit B, p 2)
7. In ██████, Appellant was charged with domestic violence, with his mother as the victim, and placed in the ██████ County Youth Center, where he was housed for 3 months. Upon his release from the Youth Center, Appellant was sent to ██████ for 8 months. Appellant was discharged on ██████ 08 and has lived with his mother since that time. (Exhibit B, p 2; Testimony)
8. Appellant worked part-time at ██████ in ██████, Michigan from ██████ to ██████. Since ██████ Appellant has worked part-time at ██████, Michigan. (Exhibit B, p 2; Testimony). Appellant obtained the job at ██████ with the assistance of Michigan Rehabilitation Services. (Testimony)
9. Appellant is not currently enrolled in C ██████ County CMH but did receive CMH services prior to turning ██████ years old through mental health services. In ██████ 2011 the Appellant's mother requested Medicaid-covered CMH services through Community Services for the Developmentally Disabled (CSDD). (Exhibit B, p 1). Appellant's mother sought services for Appellant through CMH after being told by Mid-Michigan Guardian Services that Appellant would have to be receiving CMH services before it could provide guardian services to Appellant. (Exhibit B, p 1; Testimony)
10. On ██████, ██████, a CMH Developmental Disability Clinician performed an eligibility assessment in Appellant's home. (Exhibit B, pp 1-11).
11. Following the assessment, ██████ concluded that Appellant did not meet the eligibility criteria to receive CMH-CSDD services. ██████ noted, "██████ limitations appear to be caused by a psychiatric disorder (i.e. Bipolar and ADHD) and not by a developmental disability at this time." (Exhibit B, p 8)

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12. On [REDACTED], CMH sent Appellant an Adequate Notice for Denial of Service, explaining why his request for services had been denied. (Exhibit C, pp 1-2). In response, Appellant's mother requested that a second opinion assessment be conducted.
13. On [REDACTED], [REDACTED], a CMH Certified Rehabilitation Counselor, completed a second assessment. (Exhibit D, pp 1-12). Following that assessment, [REDACTED] also concluded that Appellant did not meet the eligibility criteria to receive CMH-CSDD services. [REDACTED] noted, "[REDACTED]'s level of adaptive skills as evidenced by ICAP, clinical file review and interview does not qualify as substantial deficit in at least three areas." "The limitations evidenced are better explained through mental illness." (Exhibit D, p 9)
14. On [REDACTED], the CMH sent an Adequate Action Notice to the Appellant indicating he was not eligible for CMH services. The CMH notice indicated: "Ineligible for CSDD services" and "Therapy/Support is available from: private therapist, [REDACTED] Center for Independent Living (CACIC). (Exhibit E).
15. The Appellant's Request for Hearing was received on [REDACTED]. (Exhibit A, p 1). In the Request for Hearing, Appellant's mother indicated, in part: "[REDACTED] has substantial functioning limitations in the areas that he has poor judgment has very little understanding of how to use and manage his money, poor understanding of how to make simple decisions, he does not have basic skills to live independently." (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 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. Clinton-Eaton-Ingham County CMH 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.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible.

The CMH Representative indicated that the Michigan Mental Health Code definition of developmental disability was utilized by CMH to determine Appellant was not eligible for CMH services. That definition provides, in pertinent part:

(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.

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Here, there was no dispute that Appellant has a "severe, chronic condition" that is "attributable to a mental or physical impairment" that "manifested before the individual is █ years old" and is "likely to continue indefinitely". (Exhibit D, p 9). The only dispute is whether Appellant's condition results in substantial functional limitations in 3 or more of the listed areas of major life activity.

In the assessments conducted by CMH, both █ and █ agreed that Appellant has a substantial functional limitation in the area of self direction. (Exhibit B, p 7; Exhibit D, p 8). █ also found that Appellant has a substantial functional limitation in the area of economic self sufficiency. (Exhibit B, p 7). As such, Appellant must prove, by a preponderance of the evidence, that he has a substantial functional limitation in at least one additional area of major life activities listed above before he can be found eligible for CSDD services.

█ testified that she works as a developmental disability clinician with CMH, that she has a Masters degree in social work and that she has been doing clinical

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developmental disability assessments for 5 years. ██████████ testified that in her professional opinion, Appellant is not eligible for CMH services per the assessment she conducted. ██████████ indicated that Appellant has a very good level of skill with activities of daily living, but simply lacks motivation to complete those tasks.

██████████ testified that he is a certified rehabilitation counselor with CMH and that he conducted a second assessment, per Appellant's request. ██████████ indicated that he did not review ██████████ assessment prior to doing his own assessment because he did not want to be influenced by the prior assessment. ██████████ testified that he too did not find evidence of a developmental disability and opined that Appellant has the skills to complete activities of daily living but simply chooses not to use those skills. ██████████ also testified that Appellant's urination issues (Appellant urinates in containers and leaves them in his bedroom, urinates on his bed and then sleeps in it, and urinates on the floor in his room) are not self care issues but rather a choice. ██████████ opined that Appellant was urinating in his room to upset his mother and that the issues had more to do with Appellant's personality disorder and not a developmental disability. ██████████ testified that a person with a developmental disability is a person who lacks the skills and abilities to get through the day and needs significant help. ██████████ also testified that Appellant's functional level is different when his mother is around. ██████████ denied telling Appellant's mother that he thought Appellant was eligible for CSDD services or that ██████████ assessment was poorly done and incorrect.

Dr. ██████████ testified that she has a Bachelor's degree in Sociology and a Master's Degree and PhD in Counseling Psychology. Dr. ██████████ testified that she worked for the ██████████ State hospital for 6 years and then for CMH for 10 years before beginning private practice in 1980. Dr. ██████████ testified that she has been seeing Appellant in counseling for a little over a year. Dr. ██████████ testified that a developmental disability refers to behavior and that Appellant's behavior is not normal for a ██████████ year old. Dr. ██████████ also opined that, in Appellant's case, motivation is not a problem, but rather a symptom of his disability. Dr. ██████████ testified that Appellant is functioning at an immature level and that immature people are not expected to be motivated to act normally. Dr. ██████████ opined that Appellant is functioning at the level of a young child so he is not motivated through normal means, such as delayed gratification. Dr. ██████████ testified that in addition to having substantial limitations in the areas of economic self-sufficiency and self-direction, Appellant, in her professional opinion, also has a substantial limitation in the area of learning. In support of this opinion, Dr. ██████████ testified that Appellant was in special education during school and had been shown to have an IQ of 70 at one point, which is borderline low functioning. Dr. ██████████ testified that if Appellant had to live on his own, she would have grave concerns and he would likely end up in a shelter. Finally, Dr. ██████████ testified that in her professional opinion, Appellant needs to have a professional guardian appointed and receive an adult placement.

Based on the competent and material evidence on the whole record, the Appellant provided a preponderance of evidence that he met the Mental Health Code eligibility requirements for developmental disability. As indicated above, the CMH found in its

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own assessments that Appellant has substantial limitations in the areas of self-direction and economic self-sufficiency. Appellant provided expert testimony that he also has substantial limitations in the area of learning and this assertion by Dr. ██████████ was not rebutted by the CMH. The assertion by CMH that Appellant is urinating in his room by choice and to upset his mother is simply not credible.

As such, Appellant meets all of the criteria of a person with a developmental disability under the Mental Health code and he is eligible for CSDD through the ██████████ ██████████ County CMH. The CMH's denial of Appellant's eligibility as a person with a developmental disability was not proper.

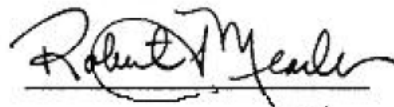
DECISION AND ORDER

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

The Appellant met the Mental Health Code eligibility requirements for services provided by CMH for persons with a developmental disability.

IT IS THEREFORE ORDERED that:

The CMH's eligibility denial decision is REVERSED.



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

cc:

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Date Mailed: 11/29/2011

***** 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.