

**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:

██████████,

Appellant

\_\_\_\_\_ /

Docket No. 2011-52460 CMH  
Case No. 22122425

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's father, appeared and testified on behalf of Appellant. ██████████, Appellant's mother, also testified on his behalf. ██████████, Assistant Corporation Counsel, represented the ██████████ County Community Mental Health Authority (CMH). Dr. ██████████, CMH Access Center Manager, appeared as a witness for the CMH.

**ISSUE**

Did the CMH properly deny Appellant's request for speech and language therapy?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old who has been diagnosed with cerebral palsy-spastic diplegia and bilateral hearing loss. (Exhibit 1, Attachment D, page 15). Appellant also uses hearing aids and underwent hip surgery in the spring of ██████. (Exhibit 1, Attachment D, page 18).
2. Appellant attends the special education program at ██████████ Elementary School. (Exhibit 1, Attachment D, page 17).
3. Appellant is also a Medicaid beneficiary and has been receiving services through the CMH. (Exhibit 1, Attachment C, pages 12-13).

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4. The 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.
5. The CMH had previously authorized the following Medicaid services: supports coordination, respite care, community living supports (CLS), physical therapy, occupational therapy, and speech and language therapy. Appellant has been receiving services since ██████████. (Exhibit 1, Attachment D, page 18; Exhibit 1, Attachment F, pages 50-72; Testimony of ██████████).
6. Speech and language therapy was again requested for Appellant for another year. (Exhibit 1, Attachment F, pages 65-67; Exhibit 1, Attachment H, pages 94-96).
7. On ██████████, the CMH sent a notice to Appellant notifying him that the speech and language therapy request was denied because “[i]nterventions can be expected to be provided by another entity (teacher, RN, PT, OT, family member or caregiver).” (Exhibit 1, Attachment A, pages 5-8).
8. The Department received Appellant’s Request for Hearing with respect to the denial on ██████████. (Exhibit 1, Attachment B, pages 9-11).

**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 C.F.R. § 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 C.F.R. § 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...

(42 U.S.C. § 1396n(b))

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.

With respect to speech and language therapy, the Medicaid Provider Manual states:

### **3.20 SPEECH, HEARING, AND LANGUAGE**

#### **Evaluation**

Activities provided by a speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.

## Therapy

Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).

Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.

Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a certified speech-language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, registered occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services may be provided by a speech-language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license). All documentation by the candidate must be reviewed and signed by the appropriately credentialed supervising speech-language pathologist or audiologist.

(Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, 3.20 Speech, Hearing, and Language, October 1, 2011, page 21)

In this case, as discussed above, Appellant's request for speech and language therapy was denied because "[i]nterventions can be expected to be provided by another entity (teacher, RN, PT, OT, family member or caregiver)." (Exhibit 1, Attachment A, pages 5-8). The Medicaid Provider Manual does provide, in part, that:

## **SECTION 2 – PROGRAM REQUIREMENTS**

### **2.1 MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES**

Mental health and developmental disabilities services (state plan, HSW, and additional/B3) must be:

\* \* \*

- Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MIChoice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices) . . .

(Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.1 Mental Health and Developmental Disabilities Services, October 1, 2011, page 8)

Here, in addition to the speech and language therapy he was receiving through the CMH in the past, Appellant was also receiving speech and language services through his school. As provided in the Individualized Education Program (IEP) Team Report dated ██████████, the direct speech and language services-interventions for Appellant are to be provided as a classroom collaborative model. (Exhibit 1, Attachment J, pages 118, 120). In practice, such interventions were to occur at least one time a week. (Exhibit 1, Attachment E, pages 43-44; Exhibit 1, Attachment F, pages 65-66; Exhibit 1, Attachment G, page 87). The IEP Team Report also described the goals of the speech and language services, as well as Appellant's progress toward those goals as of ██████████. (Exhibit 1, Attachment J, page 117).

With respect to the coordination of benefits between Appellant's school and the CMH, the only documentation in the record is a statement in the Speech-Language Evaluation/Observations, dated ██████████, that a "[s]killed therapist has reviewed client's Individual Education Program (IEP), and the above stated goals do not duplicate services of the school system." (Exhibit 1, Attachment I, page 99).<sup>1</sup> However, as testified to by ██████████, there is no description of how services are coordinated or any discussion of how the services are not duplicated. (Testimony of ██████████). Moreover, ██████████ also testified that, in the absence of any evidence of coordination, there is an expectation that the school's services are sufficient (Testimony of ██████████) and, as stated in the relevant policy, the school should provide services prior to the CMH.

Additionally, the record emphasizes the speech and language work that Appellant is to do at home with his parents or others. For example, while the most recent speech evaluation, dated ██████████, concluded with a general recommendation that Appellant continue with speech therapy, it also stated:

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<sup>1</sup> Appellant's PCP Progress Reviews reference the coordination of benefits, but do not go into detail or describe any such coordination. (Exhibit 1, Attachment E, page 44; Exhibit 1, Attachment F, page 66; Exhibit 1, Attachment G, page 88),

**Home Program Suggestions:**


It is recommended that:

1. Andrew's parents encourage him to [increase] his volume and to [decrease] his rate consistently at home.
2. Andrew practice increasing maximum phonation time daily at home.

(Exhibit 1, Attachment I, page 99)

Similarly, the Progress Reviews of Appellant's Person Centered Plan (PCP) also focus on other speech and language services that are to be provided in the home. For example, the progress reviews dated ██████████, ██████████ and ██████████ all provide that CLS staff would attend Appellant's speech and language therapy sessions Appellant was receiving at the time in order to observe and learn techniques so that they could prompt and help Appellant work on those techniques at home. (Exhibit 1, Attachment E, pages 37-38; Exhibit 1, Attachment F, pages 56-58; Exhibit 1, Attachment G, pages 79-80). The later reviews also reflect that the CLS staff has been practicing such techniques with Appellant. (Exhibit 1, Attachment F, pages 56-58; Exhibit 1, Attachment G, pages 79-80).

Speech and language therapy have been recommended and requested for Appellant. However, in accordance with the Code of Federal Regulations (CFR), Appellant bears the burden of proving by a preponderance of the evidence that he is entitled to speech and language therapy through the CMH. Here, given the above evidence regarding the speech and language services provided at Appellant's school and in his home, in addition to the lack of evidence regarding the coordination of services or the need to coordinate services, Appellant did not meet that burden in this case. Accordingly, the Waiver Agency's determination should be sustained.

  
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**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 speech and language therapy services.

**IT IS THEREFORE ORDERED** that:

The CMH decision is AFFIRMED.

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Steven J. Kibit  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 11/16/2011

**\*\*\* 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.