

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-53751 CMH
Case No. 12219118

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 guardian and grandmother, appeared and testified on behalf of Appellant. Appellant was also present during the hearing, but did not participate. ██████████, Assistant Corporation Counsel, represented the ██████████ 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 an ██████ year-old who has been diagnosed with cognitive impairment and mental retardation. She also suffers from asthma. (Exhibit D, pages, 1, 8-10).
2. Appellant lives with her grandmother/guardian and attends the special education program at ██████████ School. (Exhibit D, page 3).
3. 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.
4. Appellant has been receiving services through the CMH, including

supports coordination, respite care, community living supports (CLS), occupational therapy, and speech and language therapy. (Exhibit E, pages 1-7).

5. Speech and language therapy was again requested for Appellant for another year. (Exhibit F, pages 7-8; Exhibit G, page 1).
6. On ██████████, the CMH sent a notice to Appellant notifying her that the speech and language therapy request was denied because the therapy was “[n]ot medically necessary.” (Exhibit A, page 1).
7. The Department received Appellant’s Request for Hearing with respect to the denial on ██████████. (Exhibit B, pages 2-4).

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 services, 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.

(MPM, 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 the therapy was "[n]ot medically necessary." (Exhibit A, page 1). With respect to medical necessity, the Medicaid Provider Manual provides, in part, that:

2.5.B. 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

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- 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.

(MPM, Mental Health and Substance Abuse Section,
October 1, 2011, page 13 (emphasis added))

Here, this Administrative Law Judge finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that the speech and language therapy is medically necessary. Accordingly, the CMH's decision to deny Appellant's request for such therapy must be sustained.

The lack of medical necessity for the speech and language therapy in this case is demonstrated by the goals set for Appellant in this area. The relevant goals and objectives for Appellant were not identified at first. The Annual Assessment of Appellant, dated ██████████, provided, with respect to speech, that "[Appellant] can say basic three and four letter words, but not speak in sentences. She does use and know some sign language. She is receiving group speech therapy at school." (Exhibit D, page 4). However, it did not identify any goals or treatment for Appellant. Similarly, Appellant's Person-Centered Plan of ██████████ provided that speech therapy was requested, but no specific goals or objectives were identified. (Exhibit E, page 5). Instead, the plan merely states that Appellant will participate in an evaluation and that a Speech Therapist will develop a treatment plan. (Exhibit E, page 5).

A subsequent speech evaluation did take place on ██████████. (Exhibit H). Following that evaluation, the speech therapist recommended that Appellant receive speech and language therapy given Appellant's obvious and extensive impairments:

Due to ██████████ poor receptive language skills including difficulty in following directions and severely impaired expressive language skills including unintelligible speech, it is critical that ██████████ be seen for speech and language twice weekly, thirty to forty five minutes per session. ██████████ cannot relate her wants and needs adequately at this time. Improved receptive and expressive language skills will facilitate her ability to participate in her own care, and express her wants, needs and opinions to others.

* * *

Estimated Frequency and Duration: 2 times per week for 6 months. Given the severity of ██████████ deficits, it is likely that she

will require speech-language therapy for a long time. Therapy will be requested in 6-month periods with quarterly monitoring for appropriate progress prior to requesting continuation.

(Exhibit H, page 2)

Moreover, with respect to treatment goals, the speech therapist wrote:

1. ██████████ will increase oral motor agility to 90% accuracy.
2. ██████████ will increase her ability to follow directions.
 - a. ██████████ will be able to follow two-step directives with 90% accuracy.
 - b. ██████████ will be able to follow a three step-directive with 90% accuracy.
 - c. ██████████ will be able to follow a four-step directive with 90% accuracy.
3. ██████████ will improve her intelligibility of spoken language to 90% accuracy.
 - a. ██████████ will be able to clearly articulate consonant sounds with 90% accuracy.
 - b. ██████████ will be able to clearly articulate words with 90% accuracy.
 - c. ██████████ will be able to articulate her wants and needs in phrases to 90% accuracy.
 - d. ██████████ will be able to coordinate speaking and signing with 90% accuracy.
4. ██████████ will use sound-letter association to read/decode letters with 90% accuracy.
 - a. ██████████ will use sound-letter association to decode two to four letter words with 90% accuracy.
 - b. ██████████ will use sound-letter association to decode five to six letter words with 90% accuracy.
5. ██████████ will identify objects within the living environment with 90% accuracy.

(Exhibit H, pages 2-3).

A second speech evaluation, completed on ██████████, further described Appellant's deficits with respect to the area of speech and language, but it did not identify any new goals for Appellant. (Exhibit I, pages 1-2). In its summary, that evaluation also provided:

The patient demonstrated delayed receptive and expressive language skills. These delays interfere with her ability to express herself effectively and to comprehend new information. Speech-language therapy is recommended eight times per month to

increase [REDACTED] expressive and receptive languages skills.

(Exhibit I, page 2).

A later Speech Language Therapy Treatment Note, dated [REDACTED], merely provided that Appellant should “[c]ontinue medically based Speech and Language Therapy services to address outlined goals and objectives per Plan of Care.” (Exhibit J, page 1). Similarly, a PCP Progress review dated [REDACTED] did not discuss speech and language therapy beyond noting that Appellant receives it. (Exhibit F)

Given the above evidence, it is clear that Appellant has significant deficits in her speech and language skills. However, the mere presence of speech deficits is not enough to justify speech and language therapy. Appellant also has the burden proving, by a preponderance of the evidence, that the therapy is medically necessary. Moreover, as described above, medical necessity includes the requirement that the services be sufficient in amount, scope and duration to reasonably achieve their purpose.

Here, [REDACTED] credibly testified that, given Appellant extensive and significant impairments, Appellant’s stated goals are so unreachable for Appellant that the requested services are clearly insufficient to reasonably achieve their purpose and are, therefore, not medically necessary. (Testimony of [REDACTED]). [REDACTED] testimony is also supported by the above reports that fail to describe any significant improvement while also noting that she will require speech therapy for a long time. Appellant’s speech evaluation identified lofty goals, but there is simply no evidence suggesting that her speech and language therapy will help her reach those goals in any reasonable amount of time. Consequently, the therapy is not medically necessary.

The lack of medical necessity in this case is also demonstrated by the lack of coordination of benefits with Appellant’s school. The Medicaid Provider Manual also provides, 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) . . .

(MPM, Mental Health and Substance Abuse Chapter,
October 1, 2011, page 8)

In this case, it is undisputed that Appellant is receiving some speech and language services through her school. However, as testified to by ██████████, there is no evidence that her services through her school are being coordinated with the services she was receiving through the CMH. (Testimony of ██████████). Without such coordination, it is impossible to determine if the school's services are sufficient and if the CMH's services are necessary. Appellant's grandmother testified that the school services are insufficient to meet Appellant's speech needs (Testimony of ██████████), but she could not elaborate on her testimony. Nor were any goals or objectives identified as part of the school's services at the time of the CMH's decision.¹ The lack of knowledge and coordination with respect to the school's services only supports that CMH's decision regarding medical necessity.

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 she is entitled to speech and language therapy through the CMH. Here, given the above evidence regarding the lack of reachable goals identified in Appellant's person-centered plan and the lack of coordination with her school, Appellant did not meet that burden in this case. Accordingly, the Waiver Agency's determination should be sustained.

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.

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

¹ Appellant's representative did provide a letter from the Speech-Language Pathologist at Appellant's school detailing Appellant's goals and her progress toward those goals. (Exhibit N). However, that letter was not written at the time of the decision and it still fails to coordinate any benefits with the CMH.

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cc:



Date Mailed: 12/14/2011

***** 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.