

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

P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-12151 CMH

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████, the Appellant's mother, represented the Appellant at hearing. She does not serve as his legal guardian. She requested the record be left open to allow additional medical information to be provided for an appointment represented to be already scheduled for ██████████. The record was held open without objection by CMH until ██████████. Thereafter messages were left by the Appellant's representative indicating the medical records sought to be submitted were forthcoming and delay attributed to the doctor's office. The record was held open until ██████████. Following a leave of absence during which the medical records were eventually submitted, this ALJ closed the record ██████████, following receipt of response from CMH

██████████ for ██████████ Community Mental Health, was present on behalf of the CMH. ██████████, Supports Coordinator for the Appellant, was present on behalf of the CMH. ██████████, Utilization Review Coordinator, was present on behalf of the CMH. ██████████, Customer Services Coordinator, was present on behalf of the CMH. ██████████, Supervisor for Developmental Disability Services, was present on behalf of the CMH.

ISSUE

Did CMH properly determine the Appellant does not meet services eligibility criteria as a person with developmental disabilities?

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 ██████ year-old Medicaid beneficiary.
2. ██████████ CMH is responsible for providing Medicaid-covered mental

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health and developmental disability services to eligible recipients in its service area.

3. The Appellant may be diagnosed with pervasive developmental disorder and is diagnosed with a seizure disorder. He is only taking medication for his seizure disorder at this time. He receives SSI benefits.
4. The Appellant has been participating in Community Mental Health services for developmentally disabled persons for several years. He has been receiving supports coordination services, community living supports and representative payee services.
5. The CMH has completed a review of the Appellant's case and determined he no longer meets eligibility criteria to receive services and that there is no medical necessity for services provided through the CMH.
6. The CMH notified the Appellant he did not meet the criteria for services as a developmentally disabled person on [REDACTED].
7. The Appellant's mother requested a local appeal of the aforementioned determination.
8. The CMH then conducted a Utilization Management Review for the Appellant. The prior determination was upheld.
9. The Appellant requested a formal administrative hearing [REDACTED].
10. The Appellant has a combination of cognitive and physical impairments which result in some deficits in his functioning.
11. The Appellant has severe impairments in motor speed and dexterity.
12. The Appellant does not have a substantial functional limitation with self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living or economic self sufficiency.
13. The Appellant does not have a legal guardian and is responsible for his own decisions.
14. The Appellant has recent I.Q. testing that resulted in an overall score of 94, verbal I.Q. of 93 and Performance IQ of 94.
15. The Appellant had originally been determined to be substantially functionally limited in [REDACTED] in the areas of learning, self direction and economic self sufficiency. The prior assessment did not contain any specific information supporting the conclusion that he is substantially functionally limited in those areas.

16. The Appellant is independent with bathing, toileting, eating and dressing. He is prompted for personal hygiene.
17. The Appellant lives in his own home and is financially supported by disability income and Medicaid.
18. The Appellant can utilize public transportation without assistance. He did pass driving instruction but failed the driving test.
19. The Appellant is not at risk alone in his home and is able to be left alone.
20. The Appellant is his own guardian and has payee services.
21. The Appellant has obstructed CMH service delivery at times, by refusing to allow CMH staff entrance to his home and locking them out after arrival. He was scored a level II for poor judgment/impulse control and disruptive behaviors.
22. The Appellant's prior service plan included goals of becoming more independent and supportive needs were identified for house cleaning, emotional support, attend appointments, monitor seizures during staff hours, reminder to brush teeth/change soiled clothing, grocery shopping, cooking some meals and transportation.

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. Kalamazoo 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.

In performing the terms of its contract with the Department, the PIHP must apply Medicaid funds only to those services deemed medically necessary or appropriate. The Department's policy regarding medical necessity provides as follows:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. 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.

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
- 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.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, October 1, 2009

Denial of CMH Developmental Disability Services

As noted above the *MDCH/CMHSP 2008 Managed Specialty Supports and Services Contract, Section 3.3 and Attachment 3.1.1, Section III(a) Access Standards* directs a CMH to the Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter* for determining coverage eligibility for Medicaid beneficiaries. The text of the introductory paragraph of Medicaid Provider Manual (MPM) Section 1.6 states that it provides guidance to PIHP's regarding eligibility for a person with a developmental disability.

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However, a review of the chart provided in MPM 1.6 (text omitted in this Decision and Order) demonstrates that while it is instructive on eligibility for people with mental illness, it does not specifically set forth any eligibility guidelines for determining whether a person with physical and/or cognitive limitations meets a threshold or simply stated, qualifies for services as a developmentally disabled person. In this case the CMH used the definition of developmental disability found in the mental health code. Normally the MDCH/CMHSP contract identifies the controlling authority. Here, the *MDCH/CMHSP Managed Specialty Supports and Services Contract, Attachment 3.1.1*, (contract) instructs that the use of the Michigan Mental Health code is only to be used if the individual seeking eligibility is NOT eligible for Medicaid. However, the definition section of the contract contained the same definition for developmental disability as the Michigan Mental Health Code, thus it appears appropriate to rely on this definition when making eligibility determinations.

The Mental Health Code definition, also found in the definition section of the contract states:

(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.
- (A) 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.

MCL 330.1100a

For purposes of simplifying the application of the Mental Health Code definition to Appellant's facts, in general, the Appellant must meet four criteria: 1) a mental or physical impairment, 2) manifestation before age 22, 3) the impairment is likely to continue indefinitely, and 4) the

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impairment results in substantial functional limitations in three or more areas of major life activity.

There is no dispute between the parties that the Appellant meets some of the criteria: 1) the Appellant has some physical impairments; While it is asserted by the Appellant's representative that the Appellant has a combination of mental and physical impairments due to cognitive deficits, the CMH asserts no documentation was submitted to support this contention. For the purposes of this legal and factual analysis, this ALJ will treat the Appellant as having both a combination of physical and mental impairments. 2) The impairments were manifested prior to the age of 22 and 3) the impairments are likely to continue indefinitely. Finally, it must be established that the impairments or combination of impairments result in substantial functional limitations in three or more areas of major life activity. The last portion of the definition is in dispute between the parties.

The six areas of functioning contained in the definition of a major life activity are self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living and economic self sufficiency.

The Appellant's mother asserts the Appellant is substantially functionally limited in self care because the Appellant is receiving prompts for teeth brushing and changing his clothing. While the Appellant's lack of willingness to perform these tasks without being prompted may evidence a deficit, this does not constitute a substantial functional limitation. It may also evidence a personal preference he has not to brush his teeth and a personal determination that he prefers not to change his clothing as often as others may expect. There is no evidence in the record the Appellant has placed his health at serious risk due to unhygienic practices or that he would do so if he failed to brush his teeth at least 2 times per day or wear soiled clothing at times. It is not known that he would never brush his teeth or change his clothes. The evidence is that he has lived at home or with such extensive services in place that he has not lived independently without having someone prompt him to do the tasks according to other people's standards. An example of a substantial functional limitation in self care would be the inability to pull his own pants up. This ALJ finds the evidence presented regarding how the Appellant performs self care evidences he is not substantially functionally limited in that major life activity. The evidence presented by the Appellant's mother evidences deficits rather than a substantial functional limitation. Having some very limited assistance with some aspects of self care does not evidence a substantial functional limitation in that area.

The evidence regarding receptive and expressive language illustrates he does not have a substantial functional limitation in this area. Again, he may have some deficit, but there is no evidence to support a finding he has a substantial functional limitation. He is able to talk, hear, speak, read, write and functionally perform major life activities that require these abilities. He is not hearing impaired. He is not speech impaired. He can make himself understood and understands others, including simple directions. He can make his needs known. His need to be accompanied to medical appointments evidences a deficit but is inadequate to support a finding he is substantially functionally limited in this major life activity.

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Whether the Appellant has a substantial functional limitation with mobility is not in dispute. He does not.

Learning is another major life activity that is considered in the eligibility criteria. There is evidence in the record the Appellant has some cognitive deficits. He does have a full scale I.Q. over 90. This places him in the low average range. The documentation submitted by the Appellant's neuropsychologist indicates his I.Q. is at or near 1 standard deviation below the mean at this time. This is inadequate to support a finding he is substantially functionally limited in learning. There is some evidence prolonged exposure to seizure activity may impact his cognitive functioning. This finding does not preclude further testing or evaluation in the future to determine if his functional status dramatically changed due to the impairment that began prior to age 22 and has progressed in severity or resulted in greater limitations as he ages. At this time however, he does not evidence a substantial functional limitation, rather a slight deficit.

The witness for the CMH stipulated that the Appellant is substantially functionally limited in his capacity for economic self sufficiency. He requires the services of a payee. He has no earned income, rather is dependent on disability income, thus is not economically self sufficient.

The final major life activity contained in the criteria and not addressed thus far is capacity for independent living. This is disputed between the parties. It is stipulated he has some deficit in this area by the CMH. It is asserted it does not meet a threshold for substantial functional limitation. This ALJ agrees. The fact that the Appellant is his own guardian is consistent with a finding he does not have a substantial functional limitation in this area. It is also consistent with a finding that his hearing representative/mother does not believe he is substantially functionally limited in this area or she would have sought for a legal guardian to be appointed to protect him. This ALJ did consider the evidence of record that the Appellant had set fires while residing in his mother's home. When balanced against the evidence of record that following the incidents of accidental fire setting a separate and independent residence was sought for the Appellant rather than a guardianship or AFC home, this is inadequate to support a finding he is substantially functionally limited in this life activity. The evidence of record supports a determination that the Appellant would not make the same decisions as his parents or many others, but he has been trusted to express and pursue his own preferences and self direct for many years. This ALJ concurs with the position of the CMH in this instance.

The Appellant's mother provided evidence the Appellant has neurocognitive deficits. The criteria used by the testing neuropsychologist are not the same as the definition contained in the Michigan Mental Health Code and contract which controls the determinations of the PIHP. Nor do the findings of the examination support a finding the Appellant satisfies the legally controlling criteria. While this ALJ can appreciate the concerns harbored by the Appellant's mother that her son remain served, the correct criteria must be adhered to by this ALJ at hearing.

Summary

The credible and substantial evidence of record establishes the Appellant does not meet the definition of a developmentally disabled person under the Michigan Mental Health Code. He does have a substantial functional limitation in 1 of the 6 major life activities contained in the statutory definition, however, this is insufficient to establish a need for services from the CMH. The CMH has recommended the Appellant be evaluated for service need by the Department of Human Services Home Help Services program for assistance with household chores, shopping and cooking to address the deficits he experiences as a result of his fine motor and dexterity impairments. This ALJ agrees this avenue should be pursued.

DECISION AND ORDER

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

The Appellant does not meet the Michigan Mental Health Code eligibility requirements for developmentally disabled services provided through the CMH.

IT IS THEREFORE ORDERED that:

The CMH's termination of services is UPHELD.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/15/2011

***** 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.