

**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. 2011-22141 CMH  
Case No. [REDACTED]

[REDACTED]  
Appellant  
\_\_\_\_\_ /

**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 was held on [REDACTED] Appellant's father, appeared on behalf of the Appellant. [REDACTED] Appellant's mother, was also present.

[REDACTED] (CMH or [REDACTED] CMH), represented the CMH. [REDACTED] appeared as a witness for the Department.

**ISSUE**

Did the [REDACTED] CMH properly deny the Appellant's request for Medicaid-funded out-of-state 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 a [REDACTED] Medicaid beneficiary.
2. The Appellant has been diagnosed with fetal alcohol disorder (FAS) which presents, at times, in behavioral issues. (*Exhibit B*)
3. At time of hearing the Appellant was residing in the home of his parents.
4. The Appellant is currently enrolled in [REDACTED] CMH. The Appellant's current individual plan of service (IPOS) authorized the CMH services of community living supports, medication clinic, and supports coordination. (*Exhibit 1, p 10*).
5. On [REDACTED], and [REDACTED], the Appellant's parents

requested from CMH a residential placement for Appellant at a residential setting in Minnesota at [REDACTED] (*Exhibits 3, B*)

6. On [REDACTED], the CMH mailed Appellant notice that his request for out-of-state residential placement was denied. The denial reason stated: "...The services you are requesting are available in [REDACTED]." (*Exhibit 4*)
7. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System.

### **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*

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 operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide Medicaid State Plan Specialty Supports and Services.

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The issue in this case is whether ██████ CMH's denial of Appellant's request for out-of-state placement was proper. The CMH agrees that the Appellant is eligible for CLS and personal care in a residential setting. The CMH clarified that it is prohibited from using Medicaid dollars to pay for those two services outside of ██████████ Michigan because those services are available in ██████████, Michigan. Thus the specific question presented is whether CLS and personal care in a residential setting are available to Appellant in ██████████ and if so, can Medicaid dollars be used to fund a placement out-of-state.

Federal Medicaid regulations allow states to authorize payment for out-of-state residential placements only under certain, exceptional circumstances. 42 CFR 431.52(b) provides, in pertinent part, as follows:

(b) *Payment for services.* A State plan must provide that the State will pay for services furnished in another State to the same extent that it would pay for services furnished within its boundaries if the services are furnished to a recipient who is a resident of the State, and any of the following conditions is met:

- (1) Medical services are needed because of a medical emergency;
- (2) Medical services are needed and the recipient's health would be endangered if he were required to travel to his State of residence;
- (3) The State determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State;
- (4) It is general practice for recipients in a particular locality to use medical resources in another State.

The ██████ CMH representative and witness stated that under the CMH contract with the Department it may authorize out-of-network, medically necessary services, but only in the circumstance where the service is not available within its network, in this instance, within ██████████, Michigan.

#### 3.4.7 Out-of-Network Responsibility

If the PHP is unable to provide necessary medical services covered under the contract to a particular beneficiary the PIHP must adequately and timely cover these services out of network for the beneficiary, for as long as the entity is unable to provide them within the network.

*Medicaid Managed Specialty Supports and Services  
Concurrent 1915(b)/(c) Waiver Program 2011, p. 34.*

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The Appellant bears the burden of proving, by a preponderance of evidence, that CLS and personal care in a licensed residential setting is not available in ██████████, Michigan.

Appellant's father produced evidence that ██████████ in Minnesota has 160 acres, horses, and a stream to calm Appellant's FAS behaviors, and a farm house to live in.

Appellant's father explained that he and his wife are aging and are unable to care for him in their home.

The CMH representative responded and provided documentation that ██████████ has multiple licensed residential settings at which it can provide Medicaid-funded personal care. Appellant's father responded that Appellant has tried living in at least three residential settings which were not successful.

The CMH witness testified that there are ██████████ residential settings in more rural areas whose staff is trained to promote independence and growth while working through behavioral challenges. The CMH witness explained that residential placement is determined by needs and its homes can have licensed psychologists present to assess, design behavioral plans for an individual with behavioral challenges, and train staff.

At the time of hearing and issuance of this Decision, there is not a preponderance of evidence that there is no ██████████, Michigan residential setting at which Appellant's FAS needs can be met. The ██████████ CMH provided evidence that it has licensed residential settings at which it can authorize CLS and personal care services along with a behavioral treatment plan. Because the ██████████ CMH has evidence that it can provide Appellant with CLS, personal care, and a behavioral plan to meet his FAS needs in a licensed setting, the Appellant has not met his burden of proof.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the ██████████ CMH's denial of placement in an out-of-state residential setting was proper.

**IT IS THEREFORE ORDERED** that:

██████████ CMH's denial of the Appellant's request for Medicaid-funded, out-of-state residential placement is **AFFIRMED**.

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Lisa K. Gigliotti  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

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CC:

Date Mailed: 5/25/2011

**\*\*\* 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.