

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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. 2011-4146 MHF

██████████

Appellant

_____ /

DECISION AND ORDER

This case is before the State Office of Administrative Hearings and Rules pursuant to the provisions of MCL 330.1834 and Chapter 4 of the Administrative Procedures Act of 1969, as amended, MCL 24.271 *et seq.*

After due notice, a hearing was held on ██████████, continued to ██████████ and concluded on ██████████. ██████████ represented the Department. Her witness was ██████████. ██████████ appeared without representation. He had no witnesses.

ISSUE

Did the Department properly determine the Appellant's annual financial liability?

FINDINGS OF FACT

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

1. The Appellant's ██████████ was admitted to the ██████████ on ██████████.
2. The Appellant's ██████████ is insured through ██████████ and Medicaid. (See Testimony)
3. An annual financial determination was completed by the ██████████ reimbursement staff utilizing the Appellant's parent's ██████████ Federal Income Tax Return as they are not Michigan residents. (Department's Exhibit A, pp. 10-18)
4. Prior to institutionalization the Appellant's ██████████ had been living with her Michigan-based grandparents until she ran afoul of ██████████ County Juvenile authorities. The Appellant suffers from serious emotional issues,

multiple suicide attempts and a Complex Regional Pain Syndrome. (Department's Exhibit A, p. 3 and Appellant's Exhibit #1)

5. The determination found the Appellant's monthly ability to pay as \$██████████, and a lump sum annual ability to pay of \$██████████ based on a ██████████ joint return showing \$██████████ total income. (Department Exhibit A, p. 6)
6. On continued hearing and draft ability to pay worksheets the Department partially included and fully included the discounted values of the father's 401K retirement fund – after assessing an estimated penalty of 10 percent and 28 percent taxation rate on an actionable fund of \$██████████. The ability to pay estimates on these itemized assessment exercises were; \$██████████ and \$██████████, respectively. (See Department's Exhibit A, DRAFT-1, DRAFT-2, and worksheet page 6)
7. The Appellant asserts undue hardship. (See Testimony and Department's Exhibit A, pp. 3, 4 and 20-22)
8. The Department's reimbursement staff considered the Appellant's liabilities as well as his income and assets when determining his monthly ability to pay. (Department's Exhibit A – throughout)
9. On ██████████, the Department sent the Appellant written notification of their annual parental ability to pay determination. (Department's Exhibit A, p. 6)
10. Prior to appeal the Appellant sought the aforementioned itemized review and the appropriate documents were sent to the parents while assorted records were sought and exchanged between the parties leading to the production of DRAFT documents included within the Department's hearing summary. (See Department's Exhibit A, DAY-3)
11. On ██████████, the Department received a copy of the Appellant's request for an administrative hearing. (Appellant's Exhibit #1)

CONCLUSIONS OF LAW

Section 802 of the Michigan Mental Health Code, being MCL 330.1802; establishes financial liability for mental health services provided by the Michigan Department of Community Health. Section 804 states:

(1) A responsible party is financially liable for the cost of services provided to the individual directly by or by contract with the Department or a Community Mental Health Services program.

(2) The Department or a Community Mental Health Services program shall charge responsible parties for that portion of

the financial liability that is not met by insurance coverage. Subject to section 814, the amount of the charge shall be whichever of the following is the least amount:

- (a) Ability to pay determined under section 818 or 819.
- (b) Cost of services as defined in section 800.
- (c) The amount of coinsurance and deductible in accordance with the terms of participation with a payer or payer group.
- (3) The Department or Community Mental Health Services program shall waive payment of that part of a charge determined under subsection (2) that exceeds financial liability. The Department or Community Mental Health Services program shall not impose charges in excess of ability to pay.
- (4) Subject to section 114a, the Department may promulgate rules to establish therapeutic nominal charges for certain services. The charges shall not exceed \$3.00 and shall be authorized in the recipient's individual plan of services. MCL 330.1804

Section 822 of the Michigan Mental Health Code, being MCL 330.1822 requires all responsible parties to make:

... available to the Department or Community Mental Health Services program any relevant financial information that the Department or Community Mental Health Services program is not prohibited by law from seeking and obtaining, and that the Department or Community Mental Health Services program deems essential for the purpose of determining ability to pay. Willful failure to provide the relevant financial information may result in a determination of ability to pay up to the full cost of services received by the individual.

Expenses mean the reasonable un-reimbursed expenditures of money, actual and estimated, during a financial year to maintain a standard of living essential for one's self and his or her dependents. All of the following are considered necessities:

- (i) Food, clothing, and personal necessities.
- (ii) Shelter, including utilities and repairs for the upkeep of a homestead.
- (iii) Employment or business expenses.
- (iv) Medical services.
- (v) Taxes.

- (vi) Elementary, secondary, and postsecondary education.
- (vii) Repayment of personal financial obligations contractually established before an application was made for services, including such outstanding debt as lease payments, credit card obligations, and other educational or training expenses.
- (viii) Payments made under a divorce decree or court order. Transportation to maintain employment and necessary family activities.

R 330.8005(c)

MCL 330.1800(j) defines the responsible party as a person who is financially liable for services furnished to the individual. Responsible party includes the individual and, as applicable, the individual's spouse and parent or parents of a minor.

The Department established that the minor Appellant and her parents are the "responsible party" and that she received inpatient psychiatric services provided by the Department for which she is financially liable.

The Department is mandated by state law to determine the Appellant's ability to pay:

- (1) The Department or a Community Mental Health Services program shall determine an adult responsible party's ability to pay for residential services and inpatient services other than psychiatric inpatient services of less than 61 days by taking into consideration the adult responsible party's total financial circumstances, including, but not limited to, income, expenses, number and condition of dependents, assets, and liabilities.

MCL 330.1819

The Department established that it properly performed an ability to pay determination for the Appellant(s) based on their ████████ federal income tax return – as the parents are not Michigan residents.

The Department determined the Appellant's monthly ability to pay as \$ ████████ effective ████████, based on total income reported of \$ ████████ on their ████████ return. As the Department representative considered the Appellant's request for an itemized review they considered the Appellant's liabilities as well as his income and assets when determining monthly ability to pay.

At the conclusion of the hearing the Department representative reported that the "Central Office" had billed the Appellant's insurer, ████████ – but that it was unknown when

Medicaid would be billed or whether there would be a balance¹ for the parents to pay. They testified that the Reimbursement Unit does not send billing statements to anyone – they simply determine the parents’ annual ability to pay under the Mental Health Code.

The Appellant filed a request for an administrative hearing stating that he would have to liquidate his home and his 401K to meet the monthly payment – as his 401K plan would only allow one more loan of approximately ██████████.²

The Department representatives never said anything about the Appellant’s residence but put forth Department policy that the 401K was a useable asset because he could borrow against it – and did. It is important to note, however, that this debt [approximately \$██████████] was incurred before institutionalization of the Appellant in Michigan and was undertaken by her parents to pay other Appellant generated medical bills in ██████████. [R330.8005c (vii)]

It is a statutory requirement that an individual pay for his cost of care at a state facility. The Appellant cannot be relieved of a statutory obligation to pay unless he avails himself of a statutory exemption.

The Michigan Mental Health Code, Section MCL 330.1824 and the Administrative Code does prohibit undue burden imposed by an ability to pay:

A responsible party’s ability to pay shall not create an undue financial burden that does either of the following:

- (a) Deprives the party and his or her dependents of the necessities described in these rules.³
- (b) Deprives the party and his or her dependents of the financial means to maintain or re-establish the individual in a reasonable and appropriate community-based setting.

R 330.8279

The only witness to mention selling the home was the Appellant. The only debated item over the course of the hearing was the Appellant’s 401K which the Department correctly asserts is a useable asset, to wit; “[...] Pension, self-directed pension, deferred

¹ Ability to Pay document DCH 2451: Your determination is based on your state taxable income in accordance with the Public Mental Health ability to pay schedule established in compliance with Public Act 290 of 1995. If the cost of services exceeds insurance payments [in this case ██████████ and Medicaid], your ability to pay will be the determination amount or the balance of the cost of services, which ever is less for each whole or partial calendar month. (Emphasis supplied)

² No documentary evidence was supplied to the ALJ to support that restriction.

³ See R330.8005(c)(i) through (ix). The Appellant has ██████████ County Juvenile Court costs - outstanding incarceration expense of \$██████████. [Department Ex. A, p. 21]

compensation, annuity, or similar funds that cannot be withdrawn or used as collateral for a loan - a serious asset to sacrifice, but nevertheless useable. [R330.8005 (a) (ix)]

There was no testimony or evidence that the Appellant and his spouse and family would suffer an undue financial hardship for lack of necessities as defined under law.

Furthermore, at the time of hearing there was no known financial factor preventing the re-establishment of the Appellant in a reasonable and appropriate community-based setting, although there may well be medical reasons given the Appellant's slow improvement. There is no finding of undue financial burden. The Appellant failed to preponderate his burden of proof that the Department failed to properly calculate his annual financial determination and ability to pay.

The Department provided sufficient evidence to establish that it properly determined the Appellant's ability to pay for inpatient services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Appellant's annual financial liability.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge

cc:

[REDACTED]

Date Mailed: 4/6/2011

***** NOTICE *****

The Appellant may appeal the above Decision and Order to the probate court for the county in which he/she lives. The Appellant's appeal to the probate court must be within 60 days from the date of the Decision and Order.