

**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. 2011-45058 CMH
Case No. 89122189

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 mother, ██████████, appeared on behalf of Appellant. ██████████, 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 the Appellant's request for speech 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 Medicaid beneficiary receiving services through the Macomb County Community Mental Health. (Exhibit C)
2. 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.
3. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with cerebral palsy and a history of epilepsy and seizures. (Exhibit D, page 1; Exhibit E, page 1). Appellant has substantial functional limitations in a number of areas, including receptive language, expressive language, and learning. (Exhibit E, page 1).
4. Appellant's mother is his plenary guardian and he lives with his mother and father. (Exhibit D, pages 1, 5-6).

5. Appellant attends the ██████ School Special Ed Program. (Exhibit D, Page 7).
6. The CMH had previously authorized the following Medicaid services: supports coordination, respite care, community living supports (CLS), equipment, seizure care plan, physical therapy, occupational therapy, and speech and language therapy. Appellant has been receiving services since May of ██████. (Exhibit E, pages 2-14).
7. On or about ██████████, speech therapy was requested for Appellant for the period of ██████████ to ██████████. (Exhibit F, pages 1-4).
8. On ██████████, the CMH sent a notice to Appellant notifying that the speech therapy request was denied because “[t]herapy has not resulted in an improvement and/or elimination of the stated problem within a reasonable amount of time.” (Exhibit A, page 4).
9. The Department received Appellant’s Request for Hearing with respect to that denial on ██████████. (Exhibit B).

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.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 C.F.R. § 440.230.

Additionally, the relevant portion of the Medicaid Provider Manual states:

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

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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/Substance, Section 3.20
(Speech, Hearing, and Language Therapy) (emphasis added))

In this case, Appellant was notified that speech, hearing and language therapy was being denied because "[t]herapy has not resulted in an improvement and/or elimination of the stated problem within a reasonable amount of time." (Exhibit A, page 4). Moreover, the CMH's witness testified that, while there has been some improvement, Appellant's problems have not been eliminated through speech therapy and there has been no durability of improvement. (Testimony of Dr. ██████████). For example, Appellant's stuttering increased after therapy was stopped for a 4-6 week period of time. (Exhibit G, page 14). Dr. ██████████ also testified that, given Appellant's age and the length of time he has been in therapy, there should be durability of improvement. (Testimony of Dr. ██████████).

Additionally, Appellant essentially scored the same on the One-Word Picture Vocabulary Tests (ROWPVT) administered on ██████████ and ██████████, despite undergoing extensive speech therapy during the time between the two tests. (Exhibit G, page 11). CMH's representative further noted that Appellant's stuttering may have improved somewhat, but it is still described as a moderate to severe problem as of ██████████. (Exhibit G, page 14).

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Appellant's mother testified that her son needed speech therapy and that he has shown dramatic improvement over the years. (Testimony of Appellant's Representative). However, Appellant's mother further testified that, if the speech therapy was discontinued, Appellant would quickly regress. (Testimony of Appellant's Representative). Additionally, as Appellant's mother noted, a speech evaluation conducted on [REDACTED], indicated that

[Appellant] has demonstrated large gains during therapy sessions. His stutter has decreased during drill exercises at the single word level and during controlled reading exercises. Receptive and expressive language skills have also increased.

(Exhibit G, page 11)

That evaluation also concluded:

Much progress has been noted since the beginning of therapy. The most notable change has been in the area of dysfluency. [Appellant] is able to communicate most of the time with others demonstrating mild to moderate dysfluency. He continues to require speech language services two times a week. Based on his standardized testing [Appellant] has demonstrated a 2.1 year improvement with his expressive language skills. An increase in his stuttering was noted when therapy stopped for a 4-6 week period of time.

(Exhibit G, page 14)

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 therapy. Here, given the above evidence, Appellant did not meet that burden. As provided above, speech therapy must be "anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time."

In this case, Appellant has shown improvement in areas such as dysfluency and expressive language skills. However, speech therapy has been ineffective in other areas. For example, Appellant essentially scored the same on the ROWPVTs administered on [REDACTED] and [REDACTED]. Similarly, while his stuttering has improved somewhat, it remains a moderate to severe problem.

More significantly, any improvement Appellant has shown is merely temporary and it is undisputed that Appellant will quickly regress if the speech therapy is discontinued. As testified to by Dr. [REDACTED], given Appellant's age and the length of his therapy, the anticipated improvement from speech therapy should include permanent improvement.

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Such improvement is noticeably lacking in this case and there is nothing to suggest that it likely occur in the future. Accordingly, the speech therapy is not anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time and the CMH properly denied Appellant's request for speech therapy services.

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 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

cc:

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Date Mailed: 10/3/2011

***** 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.