

**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. 2011-45112 CMH
Case No. 34385214**

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 ██████████.

██████████, Appellant's mother, appeared on behalf of the Appellant. Also in attendance and providing testimony was ██████████, Appellant's Support Coordinator, with ██████████, a contract agency through CMH.

Ms. ██████████, Assistant Corporation Counsel, ██████████ County Community Mental Health Authority (CMH), represented the Department. Dr. ██████████, CMH Manager for Clinical Services, appeared as a witness for the Department.

ISSUE

Did CMH properly deny Appellant home-based behavioral services effective ██████████?

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 (DOB 1 ██████████) Medicaid beneficiary.
2. The Appellant is enrolled in Medicaid and Total Health Care, but not in any of the specialty waivers. (Exhibit 1, Attachment C, pp. 16-17).
3. The Appellant has been receiving CMH services since ██████████. The services included assessments, supports coordination, treatment planning, speech therapy, occupational therapy, behavioral services, respite services, and home care training. (Exhibit 1, p. 1).

██████████
Docket No. 2011-45112 CMH
Decision and Order

4. Appellant has been diagnosed with moderate mental retardation, moderately impaired; significantly high behaviors on the Autism Behavior Checklist; and, a history of lead poisoning. (Exhibit A, p. 1).
5. Appellant is attending school and is enrolled in a program for persons with autistic impairments at Wilde Elementary. (Exhibit 1, pp. 1-2, Attachment D, p. 24, Attachment E, p. 45, and Attachment G).
6. Appellant's Person Centered Plan (PCP) dated ██████████ 1 indicates that Appellant and his family were receiving the home-based behavioral services, Applied Behavior Analysis, through ██████████ Above and Beyond Behavioral Approach a contract agency with CMH. They were working with a behaviorist to reduce Appellant's tantrum behavior through communication training; to develop skills to communicate through pointing and PECS; to train family to be communication partners with PECS; and, to develop communication as a first choice for communication rather than tantrums. The family goals were to help control Appellant's tantrums, increase his communication, and increase potty training to a level commensurate with his abilities. (Exhibit 1, p. 1-2, Attachment B, and Attachment E, pp. 46 & 54).
7. A Quarterly Report by ██████████ Above and Beyond Behavioral Approach Behavioral Services dated ██████████ indicates that Appellant had successfully discontinued his tantrum behavior; that pointing as a behavioral goal is successfully discontinued but greater communication remains a goal; PECS was implemented in the home and at school as a means of functional communication, verbal reports and observation support the efficacy of this intervention; and, Appellant continues to work to develop potty training skills commensurate with his potential, but has not yet mastered this skill. (Exhibit 1, pp. 3-4 and Attachment F).
8. On ██████████, CMH sent an Adequate Action Notice to the Appellant indicating the 7 units of home-based encounter services per month requested were being denied because documentation submitted does not justify the requested service. On ██████████, CMH sent an Advance Action Notice terminating family training support services effective ██████████ as the service was determined not necessary. (Exhibit 1, Attachment A, pp. 7-12).
9. The Appellant's request for hearing was received on ██████████. (Exhibit A, Attachment B, p. 14).

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 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...

██████████
Docket No. 2011-45112 CMH
Decision and Order

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) Medicaid Managed Specialty Services waiver. CMH contracts with the Michigan Department of Community Health to provide specialty mental health services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

The Respondent's witness, Dr. ██████████ testified that the action being appealed was the CMH decision to not support Applied Behavior Analysis in the Appellant's home from ██████████ through ██████████.

Dr. ██████████ stated the Appellant is ██████ years old and has diagnoses of moderate mental retardation, moderately impaired; significantly high behaviors on the autism behavior checklist; and, a history of lead poisoning. Dr. ██████████ also stated that Appellant was attending school.

Dr. ██████████ stated Appellant was receiving home based services of Applied Behavior Analysis (ABA). These services were denied because the majority of the goals that had been identified and which caused the service to be approved had been met. Dr. ██████████ added that Appellant was well on his way on the other goals and could practice these goals in the home without the ABA service being provided within the home.

Dr. ██████████ stated the goals are stated in the ██████████ Quarterly Report. (Exhibit 1, Attachment F). On page 3 there are three goals listed (reduction of tantrum behaviors, decreasing noncompliance with adult verbal instruction, decreasing point as a sole means of communication through the use of PECS) and it indicates that each of these behaviors have been successfully discontinued. Dr. ██████████ stated that Appellant could continue to develop his communication and speech skills through services provide by the school. Dr. ██████████ stated that Medicaid was the provider of last resort where other agencies, such as the school, can provide these services.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements, Section 2.1* makes it clear that 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], MI Choice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices).

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5* makes the distinction that it is the CMH's responsibility to determine Medicaid outpatient mental health benefits based on a review of documentation. The Medicaid Provider Manual sets out the medical necessity eligibility requirements, in pertinent part:

2.5.B. MEDICAL NECESSITY 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.
- Documented in the individual plan of service.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, July 1, 2011, page 13.

The Appellant's mother Ms. ██████████ testified that she felt the Appellant really needs the behavior services that they will help him in the long run to function in society. Ms. ██████████ said Appellant needed more intervention with his behaviors and his communication to cut down on the tantrums. Ms. ██████████ said the services were beneficial and would make a big difference as Appellant got older.

██████████ Appellant's Support Coordinator who works for ██████████ also testified for the Appellant. Ms. ██████████ stated Appellant had made progress with the potty training goals, but continues to struggle with having bowel movements in the toilet. Ms. ██████████ said the behaviorist worked with the family and the family continues to use the techniques the behaviorist provided for the potty training, but Appellant is not making any progress at this time. Ms. ██████████ felt behavioral services should continue to implement new techniques to work on these skills.

The Appellant must prove by a preponderance of evidence that the CMH termination of behavioral services was improper, because he did meet medical necessity criteria for those services. While there is no real dispute among the parties or this administrative law judge that these services may help the Appellant, a preponderance of the evidence does not demonstrate that he meets medical necessity criteria for the discontinued services.

The Appellant has not met the burden of showing medical necessity for the behavioral services that were discontinued by CMH. Neither the [REDACTED] Quarterly Report or any of the other information reviewed by CMH at the time the services were discontinued, demonstrates medical necessity for continuing the behavioral services. The sum and substance of this information demonstrates that the majority of the Appellant's needs had been met by the services already provided and that he can continue to work on his communication at school and through speech services. As for potty training, the family has been instructed on techniques for improving these skills, and it is appropriate for the family to continue working on these skills in the home. The CMH provided credible evidence that their determination to discontinue Appellant's behavioral services was proper.

DECISION AND ORDER

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

The CMH's termination of Appellant's behavioral services and family training support was proper.

IT IS THEREFORE ORDERED that:

The CMH's decision is **AFFIRMED**.

[REDACTED]
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Docket No. 2011-45112 CMH
Decision and Order

Date Mailed: 9/15/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.