

**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. 2011-51704 CMH
Case No. 34064610

██████████,

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 ██████████. ██████████, Appellant's father and guardian appeared and provided testimony on behalf of the Appellant. ██████████, Appellant's mother, and Appellant ██████████ were also present for the hearing.

Ms. ██████████, Fair Hearing Officer, appeared and testified for the Department's agent, ██████████ County Community Mental Health (CMH). ██████████, Director of Developmental Disabilities Programs with ██████████ appeared as a witness for ██████████ County Community Mental Health Agency.

ISSUE

Did the CMH properly provide transportation to and from the Appellant's Medicaid covered skill-building services?

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 male Medicaid beneficiary (DOB ██████████). The Appellant is receiving Case Management, Skill Building, and Respite Services. (Testimony). The Appellant has been diagnosed with profound mental retardation, cerebral palsy, and epilepsy. (Exhibit 3, p. 7).
2. ██████████ County Community Mental Health Agency is a Community Mental Health Services Program (CMH).
3. Appellant receives services from The Guidance Center and ConsumerLink

Network is Appellant's assigned Managed Comprehensive Provider Network (MCPN). (Exhibit 1).

4. [REDACTED] County Community Mental Health Agency contracts with [REDACTED], who is responsible for obtaining contractual Medicaid covered services including transportation to skill-building services for Medicaid eligible beneficiaries.
5. On [REDACTED], a Person Centered Plan of Service (Update) for Appellant was developed and signed by the parties including Appellant's mother/guardian. (Exhibit 2, pp.12-19).
6. The Person Centered Plan (PCP) authorized Appellant to transition from school to a day program for skill-building services. The PCP provided a Notice of Hearing Rights. (Exhibit 2, pp. 2-6). Accordingly, Appellant began attending [REDACTED] ([REDACTED]) a skill building program in [REDACTED] on [REDACTED]. (Exhibit 2, p. 1, and Testimony).
7. On [REDACTED], the Appellant prepared a Request for an Administrative Hearing, which states that as that date [REDACTED] and/or the [REDACTED] had failed to arrange for and secure daily transportation for Appellant to and from his skill building services at [REDACTED] in [REDACTED], MI. (Exhibit 5).
8. The Michigan Administrative Hearing System received Appellant's request for hearing on [REDACTED]. (Exhibit 5).

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...

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 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 CFR 440.230*. The CMH witnesses [REDACTED] and [REDACTED] both testified during the hearing that the Appellant had not been provided transportation to and from his skill building services at [REDACTED] in [REDACTED], Michigan, as of the date of the administrative hearing.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, July 1, 2011, Pages 117 and 118*, states:

17.3.K. SKILL-BUILDING ASSISTANCE

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support. Skill-building assistance may be provided in the beneficiary's residence or in community settings.

Documentation must be maintained by the PIHP that the beneficiary is not currently eligible for sheltered work services provided by Michigan Rehabilitation Services (MRS). Information must be updated when the beneficiary's MRS eligibility conditions change.

Coverage includes:

- Out-of-home adaptive skills training: Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and supports services incidental to the provision of that assistance, including:
 - Aides helping the beneficiary with his mobility, transferring, and personal hygiene functions at the various sites where adaptive skills training is provided in the community.
 - When necessary, helping the person to engage in the adaptive skills training activities (e.g., interpreting).

Services must be furnished on a regularly scheduled basis (several hours a day, one or more days a week) as determined in the individual plan of services and should be coordinated with any physical, occupational, or speech therapies listed in the plan of supports and services. Services may serve to reinforce skills or lessons taught in school, therapy, or other settings.

- Work preparatory services are aimed at preparing a beneficiary for paid or unpaid employment, but are not job task-oriented. They include teaching such concepts as attendance, task completion, problem solving, and safety. Work preparatory services are provided to people not able

to join the general workforce, or are unable to participate in a transitional sheltered workshop within one year (excluding supported employment programs).

- Activities included in these services are directed **primarily** at reaching habilitative goals (e.g., improving attention span and motor skills), not at teaching specific job skills. These services must be reflected in the beneficiary's person-centered plan and directed to habilitative or rehabilitative objectives rather than employment objectives.
- Transportation from the beneficiary's place of residence to the skill building assistance training, between skills training sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Services that would otherwise be available to the beneficiary.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, October 1, 2011, Page 22*, states:

3.24 TRANSPORTATION

PIHPs are responsible for transportation to and from the beneficiary's place of residence when provided so a beneficiary may participate in a state plan, HSW or additional/B3 service at an approved day program site or in a clubhouse psychosocial rehabilitation program. MHPs are responsible for assuring their enrollees' transportation to the primary health care services provided by the MHPs, and to (nonmental health) specialists and out-of-state medical providers. The DHS is responsible for assuring transportation to medical appointments for Medicaid beneficiaries not enrolled in MHPs; and to dental, substance abuse, and mental health services (except those noted above and in the HSW program described in the Habilitation/Supports Waiver for Persons with Developmental Disabilities Section of this chapter) for all Medicaid beneficiaries. (Refer to the local DHS or MHP for additional information, and to the Ambulance Chapter of this manual for information on medical emergency transportation.)

PIHP's payment for transportation should be authorized only after it is determined that it is not otherwise available (e.g., DHS, MHP, volunteer,

family member), and for the least expensive available means suitable to the beneficiary's need.

[REDACTED] testified that Appellant's PCP calls for skill building services and transportation would be part of those services. [REDACTED] does not have the capacity to transport the Appellant. [REDACTED] stated the parents are doing the best that they can, but they are not able to provide the needed transportation on a daily basis.

[REDACTED] testified the delay was apparently due to the fact that [REDACTED], Appellant's MCPN, has yet to secure a contract with a provider who has a van equipped with a wheel chair lift suitable to transport the Appellant to [REDACTED]. [REDACTED] stated it was her understanding from [REDACTED], Executive Director of [REDACTED], that they may have a contract in place by next week with [REDACTED] Cab Company the only provider in the area with a van equipped with a wheel chair lift. [REDACTED] acknowledged that ultimately it was the responsibility of the CMH to see to it that the transportation was in place for this Appellant.

[REDACTED] testified that his son was [REDACTED] years old and has been receiving Medicaid services for a number of years. [REDACTED] stated that Appellant has been attending the program at [REDACTED] since [REDACTED]. He stated that everyone was working hard to try and see to it that transportation was arranged for the Appellant, but he could not understand why it had not yet been arranged. He expected that someone from [REDACTED] would be at the hearing to confirm that transportation had been arranged for [REDACTED].

The Appellant bears the burden of proving that he has been denied transportation to his Medicaid-covered skill-building services. The policy contained in the Medicaid Provider manual clearly indicates that transportation is part of the covered services. The evidence in this case shows that the Appellant has been denied transportation to his skill building services since [REDACTED]. Furthermore, no transportation had been arranged as of the date of the administration hearing. It is ultimately the responsibility of the CMH to see to it that such services are provided to a Medicaid eligible beneficiary. The failure of CMH to provide transportation is a constructive denial of an integral part of Appellant's authorized Medicaid-covered skill building services.


Case Name: [REDACTED]
Docket No. 2011-51704 CMH
Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH has failed to provide transportation to and from the Appellant's Medicaid covered skill-building services in accordance with policy.

IT IS THEREFORE ORDERED that:

- The CMH denial of transportation to Appellant's authorized Medicaid-covered skill-building services is REVERSED.
- The CMH shall provide transportation to and from the Appellant's Medicaid covered skill-building services within ten days of the date of this Decision and Order is issued.



William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/21/2011

***** 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.