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. 2012-26998 CMH
Case No.

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 mother, appeared and testified on Appellant's behalf.

, Manager of Due Process, appeared on behalf of (CMH or the Department). , Care Coordinator, Utilization Management Department, appeared as a witness for the Department.

ISSUE

Did the CMH properly determine Appellant's respite hours?

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 Medicaid beneficiary who has been receiving services through (CMH). (Exhibit 1, Testimony)

2. 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. The Appellant is a year old Medicaid beneficiary whose date of birth is . (Exhibit 1, p 1). The Appellant is diagnosed with severe autism. (Exhibit 2).

4. The Appellant lives with his mother, father and sister. (Exhibit 1, p 3; Testimony).

5. Appellant's mother is his primary caregiver and she works part-time. (Exhibit 1, p 3). Appellant's natural supports consist of his immediate family. (Exhibit 1, p 1; Testimony).

6. Appellant is enrolled in special education at school and is out of the home approximately 6 hours per day Monday - Friday. (Exhibit 1, p 3; Testimony)

7. A respite assessment form was completed by [redacted], MSW, LLMSW, CAAC on [redacted]. As a result of the assessment, Appellant was approved for 40 hours of respite per month. (Exhibit 1, pp 1-5). Appellant had previously been receiving 81 respite hours per month. (Exhibit 1, 23; Testimony).

8. On [redacted], CMH sent a Notice and Hearing Rights to the Appellant's mother notifying her that 40 respite hours per month were approved. The notice included rights to a Medicaid fair hearing. (Exhibit 1, pp 6-8).

9. The Michigan Administrative Hearing System received Appellant's request for hearing on [redacted]. (Exhibit 2).

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) 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 CFR 440.230.*

CMH witness [redacted], Care Coordinator in the Utilization Management Department, reviewed Appellant's Respite Assessment and testified that Appellant was awarded 4 respite hours because Appellant has two care givers who both work or are in school full-time or part-time, 2 respite hours because Appellant's primary caregiver has a condition that interferes with the provision of care, 4 respite hours because Appellant requires 3 or more interventions per night, 2 respite hours because Appellant is physically abusive to others on a weekly basis, 3 respite hours because Appellant is physically abusive to himself on a daily basis, 1 respite hour because Appellant has weekly temper tantrums, and 1 respite hour because Appellant wanders on a weekly basis. [redacted] testified that Appellant was also awarded 3 respite hours because he requires assistance with oral

care, 2 respite hours because Appellant can eat independently after setup, 4 respite hours because Appellant requires total physical assistance with bathing, 4 respite hours because Appellant requires total physical assistance with toileting and 4 respite hours because Appellant requires total physical assistance with dressing, for a total of 40 respite hours per month.

explained that Appellant's overall number of respite hours may be lower than it had been previously because the respite assessment scoring tool changed in Under the prior scoring tool, individuals were granted 20 respite hours per month from the start; then additional hours were added depending on specific needs. Under the current scoring tool, individuals are no longer granted 20 respite hours up front, but those 20 hours have been redistributed throughout the scoring tool, and are available based on individual need. explained that realized that it was an outlier with regard to granting 20 respite hours up front and that it changed its policy to come in-line with other counties in the State. also indicated that the new scoring tool is now much more objective and needs based and that all authorizations for services are based on documentation. indicated that it is possible to obtain the maximum of 96 hours of respite hours per month using the scoring tool. also testified that the person who conducts the interview for the assessment is not privy to the scoring system; hence there is no risk that the interviewer could manipulate the answers to affect the score. Finally, testified that, in her professional opinion, the 40 respite hours approved per month accurately reflects the needs of the Appellant.

, Appellant's mother testified that Appellant needs constant supervision from the time he gets off the bus from school until the time he goes to bed. testified that Appellant has also begun to inappropriately touch himself since he has reached puberty. When asked if she informed of the inappropriate touching when the respite assessment was conducted, testified that she did not meet with, or discuss, the respite assessment with . testified that she has not seen in person since and that the only time they recently spoke on the phone it had nothing to do with respite hours or the respite assessment. was asked if she met with at the CMH offices on from 10:40 a.m. to 11:35 a.m., as it indicates on the first page of the Individual Plan of Service Meeting, and she answered that she had not. reiterated that she has not met with in person since .

The *Medicaid Provider Manual, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Its states with regard respite:

> **17.3.J. RESPITE CARE SERVICES**
>
> Services that are provided to assist in maintaining a goal of living in a natural community home by temporarily relieving the unpaid primary caregiver (e.g., family members and/or adult family foster care providers) and is provided during

> those portions of the day when the caregivers are not being paid to provide care. Respite is not intended to be provided on a continuous, long-term basis where it is a part of daily services that would enable an unpaid caregiver to work elsewhere full time. In those cases, community living supports, or other services of paid support or training staff, should be used. Decisions about the methods and amounts of respite should be decided during person-centered planning. PIHPs may not require active clinical treatment as a prerequisite for receiving respite care. These services do not supplant or substitute for community living support or other services of paid support/training staff.
>
> *MPM, Mental Health and Substance Abuse Section, October 1, 2011, Page 118-119*

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve her goals. The Medicaid Provider Manual also requires a Person Centered Plan conducted annually.

Here, the unrebutted testimony at the hearing was that did not meet with, or speak to, Appellant's mother to complete a respite assessment on or to conduct an individual plan of service meeting on . did not testify at the hearing and her electronic signature on each form is insufficient to prove that either meeting took place. The individual plan of service meeting documentation is not signed by Appellant or his mother. As such, the respite assessment presented by the Department at the hearing is not reliable enough to determine the number of respite hours that Appellant is entitled to.

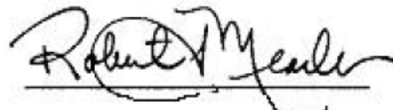
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides the respite assessment presented by the Department at the hearing is not reliable enough to determine the number of respite hours Appellant is entitled to.

IT IS THEREFORE ORDERED that:

The CMH decision is REVERSED.

The Department shall reinstate Appellant's respite hours to 81 hours per month until such time as it conducts a reliable respite assessment.



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 3/6/2012

***** 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.