

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. 2012-27894 CMH
Case No. [REDACTED]

[REDACTED],
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 [REDACTED]. Attorney [REDACTED] represented the Appellant. Appellant's adoptive father, [REDACTED], and [REDACTED], LLP, QMRP, a Contractual Employee of MORC, appeared and testified on Appellant's behalf.

Attorney [REDACTED], Assistant Corporation Counsel represented the [REDACTED] [REDACTED] (CMH). [REDACTED], Ph.D., Clinical Services Manager for CMH, appeared as a witness for the Department.

ISSUE

Did the CMH properly deny the Appellant's request for residential placement?

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 [REDACTED] year old Medicaid beneficiary, DOB: [REDACTED]. Appellant is enrolled in Medicaid and the [REDACTED], a Medicaid Health Plan, but not in any specialty Medicaid Waivers administered by the [REDACTED] (CMH). (Exhibit 1 & Attachment C).
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. Appellant has been given various diagnoses including: mood disorder NOS; intermittent explosive disorder; ADHD; pervasive developmental disorder NOS (autism spectrum); bipolar disorder, most recent episode depressed; rule out Asperger's, pervasive develop NOS, or Rhetts disorder, and possible exposure

to alcohol in uterus. Accordingly, Appellant has been given dual diagnoses of being a child with a serious emotional disturbance and developmental disabilities. (Exhibit 1, Attachments B, D-H, Exhibit 2, and testimony).

4. Appellant currently lives in the family home with his adoptive parents. Appellant is attending [REDACTED] operated by the [REDACTED] and is in classes for students with emotional problems. (Exhibit 1, Attachments E-H, Exhibit 2; and testimony).
5. On [REDACTED], the CMH sent a notice to the Appellant's father notifying him that children's residential services were denied effective [REDACTED] as the Appellant did not meet criteria for the services requested. The notice included rights to a Medicaid fair hearing. (Exhibit 1 & Attachment A).
6. MAHS received Appellant's request for a hearing on [REDACTED]. (Exhibit 1 & Attachment 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 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

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(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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See *42 CFR 440.230*.

██████████, a fully licensed psychologist with the CMH testified that Appellant has been given variety of diagnoses including mood disorder NOS, intermittent explosive disorder, borderline intellectual functioning, speculation of exposure to alcohol and psychological substances, some indication of a pervasive development disorder NOS, and at one point an autism spectrum disorder.

██████████ stated that Appellant was ██████ years old and was Medicaid eligible. ██████████ stated Appellant currently attends classes for the emotionally impaired at ██████████. ██████████ stated Appellant has been authorized to receive Medicaid services from CMH that include assessments, treatment planning, intensive crisis stabilization, crisis residential, and home based services of medication management, community living supports, and behavioral services.

██████████ stated under the pertinent policy in the Medicaid Provider manual Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. She stated that Medicaid does not cover long-term residential placement for a child with a severe emotional disturbance. ██████████ stated that the

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Appellant's diagnoses support both mental health issues and possibly some sort of a developmental disability.

██████████ stated that if long-term residential placement were available to the Appellant, he would have to meet the requirements of medical necessity contained in the Medicaid Provider Manual. ██████████ stated that CMH could deny a service where there is other appropriate efficacious, less restrictive, and cost effective supports that satisfies the standards for medical necessity. ██████████ stated that CMH believes there are other services that meet Appellant's needs besides long-term residential placement, such as intensive community services, CLS, a behaviorist, respite, education and training for Appellant's parents, therapy, and parent's support partners. ██████████ stated that when Appellant was last released from ██████████ ██████████ on ██████████ they indicated he had done well in the unit and that he should continue with services through CMH and use the services within the community.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.3* provides:

2.3 LOCATION OF SERVICE [CHANGE MADE 4/1/11]

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- Nursing facility mental health monitoring;
- Psychiatric evaluation;
- Psychological testing, and other assessments;
- Treatment planning;

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- Individual therapy, including behavioral services;
- Crisis intervention; and
- Services provided at enrolled day program sites.

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

Medicaid does not cover services delivered in Institutions of Mental Disease (IMD) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is for the purpose of transitioning a child out of an institutional setting (CCI). The following mental health services initiated by the PIHP (the case needs to be open to the CMHSP/PIHP) may be provided within the designated timeframes:

- Assessment of a child's needs for the purpose of determining the community based services necessary to transition the child out of a CCI. This should occur up to 60 days prior to the anticipated discharge from a CCI.
- Wraparound planning or case management. This should occur up to 60 days prior to discharge from a CCI.

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities). **(revised 4/1/11)** (Emphasis added).

Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, January 1, 2012, pages 9-10.

██████████ testified he was the Appellant's adoptive father. ██████████ stated Appellant has been home two weeks now and is currently attending ██████████ a special education school for kids with emotional and learning disabilities. Appellant is in the emotional part of the school. ██████████ stated Appellant has had outbursts at school and used inappropriate language. He has refused to do his work, stomped out of the classroom, threw furniture around, left the school premises, attacked an aide, screamed at a teacher her that he would rape her and have anal intercourse with her and the police had to be called. There have been a number of times where Appellant has physically and verbally attacked students, the teacher, and aides where the police had to be called.

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██████████ contacted CMH for services in ██████████ after Appellant attacked his sister and ██████████. The police had to be called on those occasions. ██████████ stated Appellant was hospitalized at ██████████ in ██████████ and again in ██████████ after he tried to attack his sister again. The police had to be called at that time. ██████████ stated that Appellant is under the jurisdiction of the juvenile court and has to return for a court date on ██████████ for breaking his diversion agreement.

██████████ acknowledged that has received an assessment and a behaviorist through CMH. ██████████ stated they have been approved for 15 hours per week of CLS services, but have not been able to secure CLS services so far and no one has been found who can deal with Appellant's behavior problems.

██████████ testified he is a contractual psychologist/behaviorist with ██████████. ██████████ stated he did an emergency evaluation of Appellant while he was at the ██████████ on ██████████. Appellant was affable and cooperative during the evaluation. ██████████ stated based upon the evaluation it would be difficult to have Appellant in the home with limited CLS hours. Appellant had advised him that he had strong fantasies of rape and murder towards his sister and family members. ██████████ stated Appellant believes he is unsafe in the home and can't control himself when angry.

██████████ stated Appellant has been cooperative and respectful towards him when he has been in the family home. However, the situation with the family in the home is very strained. ██████████ stated Appellant is an intimidating force in the home. He focuses solely on his own needs and becomes enraged and physically violent when his needs are not met.

██████████ felt 15 CLS hours were not adequate to meet the needs of the Appellant. Also respite hours are needed to allow the family to escape the home when necessary. ██████████ thought 40 CLS hours per week and 24 respite hours per week would be appropriate. Regardless of the available services, ██████████ did not think it was safe for Appellant to be in the home.

The relevant policy from the Medicaid Provider Manual establishes that Medicaid does not cover residential services provided to children with a serious emotional disturbance in a Child Caring Institution unless it is for the purpose of transitioning a child out of an institutional setting (CCI). The policy further provides that Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint.

The Appellant bears the burden of proving by a preponderance of the evidence that he meets the criteria for residential placement in accordance with the Code of Federal Regulations (CFR). Appellant has not met this burden to establish that he meets the criteria for such a placement. CMH has shown that there are services available in the community which they believe can assist the Appellant and his family in dealing with mental health and related behavioral problems.

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During the hearing, Appellant expressed some dissatisfaction with the availability and the quantity of services authorized by CMH. However, the Adequate Action Notice appealed from only denied residential placement for the Appellant. Accordingly, the only matter properly before this Judge is the denial of residential placement. Based upon the clearly stated policy in the Medicaid Provider Manual, Medicaid cannot pay for such residential services for a child with a serious emotional disturbance, only for children who have a developmental disability and only in a CCI that that exclusively serves children with developmental disabilities.

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 residential placement.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



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

cc:



Date Mailed: 3/7/2012

***** 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.