

**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. 2012-39321 KBH
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 Thursday, [REDACTED], [REDACTED], Benefits Coordinator for Community Living Services of Oakland County, appeared on behalf of the Appellant. [REDACTED] Appellant's mother, and [REDACTED] Appellant's Supports Coordinator through Community Living Services, were present for the hearing but did not testify.

[REDACTED], Assistant Attorney General, represented the Michigan Department of Community Health (MDCH or Department). [REDACTED] R.N., CPNA, Nurse Consultant, Children's Special Health Care Services, Michigan Department of Community Health, appeared and testified on behalf of the Michigan Department of Community Health (MDCH or Department).

ISSUE

Did the Department properly determine Appellant was not eligible for the Home Care Children Program?

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 not a Medicaid beneficiary.
2. The Appellant was born on [REDACTED]. Appellant has been diagnosed with [REDACTED] syndrome, failure to thrive, seizure disorder and is on multiple anti-epileptic medications, history of elevated liver function, history of pancreatitis, scoliosis, and history of pneumonia. Appellant is

totally dependent on her parents for her ADLs, she is currently NPO, and is gastrostomy tube dependent. (Exhibit 1, pp. 3, 6).

3. In [REDACTED] the Michigan Department of Community Health, Children's Special Health Care Services (MDCH CSHCS) received a request for consideration of Appellant's eligibility for Home Care Children coverage from [REDACTED] Benefits Coordinator for Community Living Services of Oakland County. (Exhibit 1, p. 2).
4. On [REDACTED] a determination of not eligible was made by the Department. On [REDACTED], MDCH CSHCS sent Appellant a notice of Home Care Children eligibility denial. (Exhibit 1, p 2).
5. The rationale for the denial was the failure to document the child required the level of care provided in an institutional setting. The child was "determined to not meet the criteria of: (i) the individual requires the level of care provided in a hospital, skilled nursing facility or intermediate care facility." The basis for the decision is within the Bridges Eligibility Manual (BEM) 170 of the Department of Human Services (DHS). (Exhibit 1, p. 2).
6. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's request for hearing. (Exhibit 1, p. 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 Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) added a provision to Title XIX of the Social Security Act which expanded Medicaid coverage to children with a medical institution level of care need but were otherwise ineligible for Medicaid due to a higher family income. The program is also referred to as the [REDACTED] program. See P.L. 97-248,

Docket No. 2012-39321 KBH
Decision and Order

Section 134. In essence, the [REDACTED] provision in TEFRA allowed states to waive the requirement for considering parental income in the process of determining Medicaid eligibility.

The implementing provision of the Code of Federal Regulations, as related to TEFRA individuals under age [REDACTED] who would be eligible for Medicaid if they were in a medical institution is, in pertinent part:

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

- (1) The child requires the level of care provided in a hospital, SNF, or ICF.
- (2) It is appropriate to provide that level of care outside such an institution.
- (3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home. [42 CFR 435.225].

The State of Michigan's policy is consistent with the Social Security Act, Code of Federal Regulations and State Plan. The State of Michigan, Department of Human Services, Bridges Eligibility Manual (BEM) 170, 10-1- 2010, lists the criteria for eligibility and delineates the division of eligibility determination responsibility between the Department of Community Health and the Department of Human Services. The manual states:

DEPARTMENT POLICY

MA Only

This is an SSI-related Group 1 MA category.

MA is available to a child who requires institutional care but can be cared for at home for less cost.

The child must be under age 18, unmarried and disabled. The income and assets of the child's parents are **not** considered when determining the child's eligibility.

The Department of Community Health (DCH) and DHS share responsibility for determining eligibility for Home Care Children. All eligibility factors must be met in the calendar month being tested.

NONFINANCIAL ELIGIBILITY FACTORS

DCH Responsibilities

DCH determines if medical eligibility exists. That is:

- The child requires a level of care provided in a medical institution (i.e., hospital, skilled nursing facility or intermediate care facility); and
- It is appropriate to provide such care for the child at home; and
- The estimated MA cost of caring for the child at home does **not** exceed the estimated MA cost for the child's care in a medical institution.

DCH also obtains necessary information to determine whether the child is disabled and forwards it to the DHS State Review Team (SRT). If the criterion in BEM 260 is met, disability will be certified on a DHS-49-A, Medical-Social Eligibility Certification, by the SRT.

Communication to the Local Office

If the child is disabled and requirements (a) through (c) above are met, DCH Central Office sends a Policy Decision (MSA-1785) and the medical packet to the appropriate DHS local office. The MSA-1785 certifies that the medical requirements in “**DCH Responsibilities**” above are met.

DCH will also notify the DHS local office when this category can no longer be used for a child. Pursue eligibility for other MA categories when a child is no longer eligible for this category.

Local Office Responsibilities

Do not authorize MA under this category without a MSA-1785 instructing you to do so. Use this category when the child is

not an SSI or FIP recipient. Use this category before using a Group 2 category.

If a MSA-1785 is received for a child who is **not** an MA applicant or recipient, treat the MSA-1785 as a request for assistance. Contact the child's parents concerning an MA application for the child.

Determine if the child meets the MA eligibility factors in the following items:

- BEM 220, Residence.
- BEM 223, Social Security Numbers.
- BEM 225, Citizenship/Alien Status.
- BEM 257, Third Party Resource Liability.
- BEM 270, Pursuit of Benefits.

Local offices are responsible for disability reviews. See BEM 260.

Note: An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review (sic) should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories. See BAM 115 and 220.

INQUIRIES

Inquiries from medical providers or parents concerning medical eligibility (requirements in “**DCH Responsibilities**” above) under this category should be directed to a Nurse Consultant at:

Department of Community Health
Public Health Administration
Bureau of Family, Maternal & Child Health, Children's
Special Health Care Services
Lewis Cass Building, 6th Floor
320 S. Walnut Street
Lansing, MI 48913
Phone: (517) 335-8983

FINANCIAL ELIGIBILITY FACTORS

Financial eligibility is determined by the DHS local office. Only the child's own income and assets are counted. Do **not** deem income and assets from the child's parents to the child.

Groups

The child is a fiscal and asset group of one.

Assets

The child's countable assets cannot exceed the asset limit in BEM 400. Countable assets are determined based on MA policies in BEM 400 and BEM 401.

Divestment

Do **not** apply policy in BEM 405.

Income Eligibility

Apply the MA policies in BEM 500, 530, and 540 to determine net income. Income eligibility exists when the child's net income is equal to or less than:

- \$637 for months in calendar (sic) year 2008.
- \$623 for months in calendar (sic) year 2007.

VERIFICATION REQUIREMENTS

Verification requirements for all eligibility factors are in the appropriate manual items.

LEGAL BASE

MA

Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248), Section 134

JOINT POLICY DEVELOPMENT

Medicaid, Adult Medical Program (AMP) also known as Adult Benefit Waiver (ABW), Transitional Medical Assistance (TMA/TMA-Plus), and Maternity Outpatient Medical Services (MOMS) policy has been developed jointly by the Department of Community Health (DCH) and the Department of Human Services (DHS). [BEM 170].

Docket No. 2012-39321 KBH
Decision and Order

The State of Michigan operates a medical coverage program for children eligible under the TEFRA provision with approval from the Centers for Medicare and Medicaid Services (CMS). The program is titled Home Care Children and is housed within the Department of Community Health (MDCH) Children's Special Health Care Services (CSHCS). Because the State of Michigan opted to operate the Home Care Children Program it must offer the program statewide, and must determine for each child requesting eligibility determination, whether he or she meets the three conditions of 42 CFR 435.225(b). Because the TEFRA provision includes eligibility for Medicaid benefits the Department is required to send a written notice of Home Care Children denial and the Appellant possessed a right to a Medicaid fair hearing. See 42 CFR 431.200, et seq.

In [REDACTED] MDCH CSHCS received a request for Home Care Children eligibility determination from Lea Wilkinson Benefits Coordinator for Community Living Services of Oakland County on behalf of the Appellant. Included with the Appellant's request were the documents contained in Respondent's Exhibit A, pp. 6-279. On [REDACTED] a determination of not eligible was made by the Department. On [REDACTED] MDCH CSHCS sent Appellant a notice of eligibility denial. (Exhibit 1, p. 2). The rationale for the denial was the failure to document the child required the level of care provided in an institutional setting. The child was "determined to not meet the criteria of: (i) the individual requires the level of care provided in a hospital, skilled nursing facility or intermediate care facility." The basis for this decision is within Bridges Eligibility Manual (BEM) 170 of the Department of Human Services." (Exhibit 1, p. 2). The Appellant appealed this denial.

The Department's witness [REDACTED] stated he has a Master's of Science in Nursing with an emphasis in Pediatric Nursing; he is a registered nurse in the State of Michigan; and, he is nationally certified as a Pediatric Nurse Practitioner. [REDACTED] stated he has worked for the Department for just under [REDACTED] years as a Nurse Consultant. He stated he is a consultant for the State relative to individuals who have children with special handicapping conditions. As part of his duties, [REDACTED] oversees and makes eligibility determinations for the Home Care Children Program.

[REDACTED] stated the Home Care Children Program is simply an eligibility program, considering the disabled child as a "family of one", that sets up certain criteria to determine whether the disabled child is eligible for Medicaid. There are no services connected with the program. [REDACTED] stated the criteria for eligibility are set forth in the Bridges Eligibility Manual, (BEM) 170.

[REDACTED] stated according to the criteria set forth in BEM 170 DCH determines medical eligibility and DHS determines financial eligibility. [REDACTED] stated he reviewed the medical records submitted by [REDACTED] on behalf of the Appellant, which are found in Respondent's Exhibit A, pp. 6-279. [REDACTED] stated based on BEM 170, he must determine whether the medical information submitted shows that the Appellant is a child that requires the level of care provided in an institutional setting, i.e., in a hospital, skilled nursing facility, or an intermediated care facility.

Docket No. 2012-39321 KBH
Decision and Order

██████████ stated he reviewed the Appellant's medical records and prepared a detailed chart/summary of his findings, which is contained in Respondent's Exhibit A, pp. 3-5. ██████████ stated that his determination was made at the first level, and he found that the medical records submitted by Appellant did not show that she was a child that required care in an institutional setting.

██████████ acknowledged the medical records did demonstrate that the Appellant was disabled and dependent for all of her ADLs on her parents. He stated the Appellant does have care needs and might be eligible for admission to an institution for care, but her medical records did not show that the Appellant required an institutional level of care. ██████████ gave examples of the type of care that would require an institutional level of care. He stated that it would involve cases that required ongoing assessments by a nurse and judgments being made by the nurse that the patient's care needs to be changed. This would include children in an ICU on a ventilator, or on a continuous dialysis machine. ██████████ concluded that the Appellant did have care needs and had a debilitating condition, but according to the records from her treating physicians, she did not meet the criteria requiring care in an institutional setting.

Appellant questioned whether the DHS Medical Review Team had certified that she was eligible for the Home Care Children Program and referred to a DHS-49-A found in Respondent's Exhibit A, pp. 11-12. The form does indicate some type of approval per BEM 170. However ██████████ stated that DHS must certify that the child is eligible for SSI in order to be eligible for a further determination of medical eligibility by DCH. He reaffirmed that DCH is charged with making the decision on medical eligibility and DHS determines financial eligibility.

Appellant did not present any testimony or documentary evidence during the hearing. Instead, Appellant attempted to argue that the medical records did show that the Appellant required an institutional level of care. Appellant pointed out the DHS-49-A did certify the Appellant's disability, and urged that it established her eligibility for the program. Appellant also stated she did not agree with the summary/comments contained in Respondent's Exhibit A, pp. 3-5.

Appellant argued that the diagnoses listed in the records, and the fact that she is dependent on her parents for care, imply that she is in need of a high level of care, including the fact that she requires the use of a feeding tube that must be monitored by another person. Appellant argued that the addition of a cough assist machine showed the need for an increased level of care and denotes a worsening of the Appellant's condition. Appellant also argued that the need for the administration of multiple medications, since Appellant cannot do this for herself, is an indication that she may need institutional care. Appellant argued that her parents have to provide 24 hour rigorous care, and if they abandoned her, Appellant would have to be admitted to a care facility because of her severe disability.

The preponderance of the evidence in this case demonstrates that the MDCH properly found that the Appellant did not require an institutional level of care. Thus, she is not Medicaid eligible under the Home Care Children Program. It is clear under BEM 170 that DCH makes

Docket No. 2012-39321 KBH
Decision and Order

the medical eligibility determination not DHS. According to the BEM, DHS only certifies the child's disability on a DHS-49-A, not that the child is medically eligible for the program.

Appellant attempted to argue that the evidence showed that her condition was such that she required an institutional level of care, but for the rigorous care that her parents are providing for her. However, [REDACTED] a trained nurse consultant, with a master's degree in nursing evaluated the medical records and gave his professional opinion that the Appellant might be eligible for admission to an institution for care, but the medical records did not demonstrate that she required an institutional level of care.

[REDACTED] established that an institutional level of care is occasioned by the need for a nursing staff that can make ongoing assessments and judgment's regarding the need for changes in the child's medical treatment. The evidence shows that the Appellant does not require this level of care. Furthermore, abandonment by her parents would not automatically require institutional care, as foster parents, or other relatives could take the place of Appellant's parents and continue to provide for the Appellant's needs.

Appellant has failed to prove by a preponderance of the evidence that the Department erred in finding her ineligible for Medicaid under the Home Care Children Program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Appellant was not eligible for the Home Care Children Program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D Bond

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

cc:

[REDACTED]

Date Mailed: 8/31/2012

***** 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.