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:

[redacted],

Docket No. 2012-44292 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq*. and upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared and testified on her own behalf. [redacted], Manager of Due Process, appeared on behalf of the Genesee County Community Mental Health (CMH). [redacted], Utilization Manager, also appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for housing assistance?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [redacted] who resides in [redacted].

2. The 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. In [redacted] Appellant requested housing services through the CMH and she was screened for eligibility. [redacted]

4. That same day, the CMH sent Appellant a notice that it was denying g her request because she did not meet eligibility requirement for services through the CMH. [redacted]

5. Appellant requested a second opinion and her application was reviewed once again. However, the CMH again denied her request. [redacted]

6. Appellant then requested a local appeal. The local appeal was assigned to [redacted] and she affirmed the denial on behalf of the CMH on [redacted]

7. The Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant on [redacted]

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…
>
> (42 USC 1396n(b))

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.

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy and, with respect to housing assistance, it states:

> **17.3.G. HOUSING ASSISTANCE**
>
> Housing assistance is assistance with short-term, interim, or one-time-only expenses for beneficiaries transitioning from restrictive settings and homelessness into more independent, integrated living arrangements while in the process of securing other benefits (e.g., SSI) or public programs (e.g., governmental rental assistance and/or home ownership programs) that will become available to assume these obligations and provide needed assistance.
>
> Additional criteria for housing assistance:
>
> - The beneficiary must have in his individual plan of services a goal of independent living, and either live in a home/apartment that he/she owns, rents, or leases; or be in the process of transitioning to such a setting; and
>
> - Documentation of the beneficiary's control (i.e., beneficiary-signed lease, rental agreement, deed) of his living arrangement in the individual plan of service; and
>
> - Documentation of efforts (e.g., the person is on a waiting list) under way to secure other benefits, such as SSI or public programs (e.g., governmental rental assistance, community

housing initiatives and/or home ownership programs) so when these become available they will assume these obligations and provide the needed assistance.

Coverage includes:

- Assistance with utilities, insurance, and moving expenses where such expenses would pose a barrier to a successful transition to owning or leasing/renting a dwelling

- Limited term or temporary assistance with living expenses for beneficiaries transitioning from restrictive settings and homelessness

- Interim assistance with utilities, insurance or living expenses when the beneficiary already living in an independent setting experiences a temporary reduction or termination of his own or other community resources

- Home maintenance when, without a repair to the home or replacement of a necessary appliance, the individual would be unable to move there, or if already living there, would be forced to leave for health and safety reasons.

Coverage excludes:

- Funding for on-going housing costs

- Costs for room and board that are not directly associated with transition arrangements while securing other benefits

- Home maintenance that is of general utility or cosmetic value and is considered to be a standard housing obligation of the beneficiary

Replacement or repair of appliances should follow the general rules under assistive technology. Repairs to the home must be in compliance with all local codes and be performed by the appropriate contractor (refer to the general rules of the Environmental Modifications subsection of this chapter). Replacement or repair of appliances, and repairs to

> the home or apartment do not need a prescription or order from a physician.
>
> (MPM, Mental Health/Substance Abuse Section January 1, 2011, pages 114-115)

However, while housing assistance is a recognized covered service, a beneficiary must still met the eligibility requirements for services as a whole, which includes in part:

> **1.6 BENEFICIARY ELIGIBILITY**
>
> A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record.
>
> (MPM, Mental Health/Substance Abuse Section January 1, 2011, page 3)

Here, Appellant is not eligible for services because she cannot demonstrate that she has a mental illness, serious emotional disturbance or developmental disability. The state of Michigan's Mental Health Code defines those first two conditions as follows:

> (2) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:
>
> (a) A substance abuse disorder.
> (b) A developmental disorder.
> (c) "V" codes in the diagnostic and statistical manual of mental disorders.
>
> (3) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that

> exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:
>
> (a) A substance abuse disorder.
> (b) A developmental disorder.
> (c) A “V” code in the diagnostic and statistical manual of mental disorders.

(MCL 330.1100d)

Additionally, with respect to developmental disabilities, the Mental Health Code provides:

> (21) "Developmental disability" means either of the following:
>
> (a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
>
> (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
>
> (ii) Is manifested before the individual is 22 years old.
>
> (iii) Is likely to continue indefinitely.
>
> (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
>
> (A) Self-care.
> (B) Receptive and expressive language.
> (C) Learning.
> (D) Mobility.
> (E) Self-direction.

> (F) Capacity for independent living.
> (G) Economic self-sufficiency.
>
> (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
>
> (b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

(MCL 330.1100a(21))

In this case, [redacted] testified that the CMH's assessment of Appellant revealed no definitive diagnoses for Appellant and, in fact, the assessor specifically ruled out a number of diagnoses, including adjustment disorder with mixed anxiety and depression. [redacted] also testified that the CMH's assessment failed to identify any mental health services Appellant was receiving. [redacted]

In response, Appellant merely testified that she has had lots of issues over the years and that she has been diagnosed with depression and bipolar disorder. However, the record does not contain any evidence of a doctor making those diagnoses. Similarly, while Appellant claims that she is on a number of medications, the record is silent on that issue as well. In light of the lack of evidentiary support for Appellant's testimony, in addition to the CMH's assessment, Appellant has failed to show that she has a mental illness, serious emotional disturbance or developmental disability.

Moreover, assuming for the sake of argument that Appellant can demonstrate a mental illness, serious emotional disturbance or developmental disability, she cannot show that her needs exceed the MHP benefits she is receiving. Appellant testified that, while she can generally take care of herself, she has been receiving therapy and is on some medications. Appellant did not testify that the mental health services she is receiving are insufficient and, as noted by [redacted], those types of services are typically encompassed by MHP benefits.

Given the above record, Appellant has failed to meet her burden of proving by a preponderance of the evidence that the CMH erred. Accordingly, the CMH's denial of services must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's request for housing assistance.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 6.19.2012

***** 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.