STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 2012-44677 CMH
[redacted], **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*., upon the Appellant's request for a hearing.

After due notice, a hearing held on [redacted], Appellant's [redacted], appeared and testified on Appellant's behalf. [redacted], Supports Coordinator, also testified on Appellant's behalf. [redacted], Assistant Corporation Counsel, represented the Macomb County Community Mental Health Authority (CMH). [redacted], CMH Access Center Manager, appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for a speech and language evaluation?

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 an [redacted] who has been diagnosed with Generalized Anxiety Disorder, Pervasive Developmental Disorder NOS, Mild Mental Retardation, Autistic Disorder, and Attention-Deficit/Hyperactivity Disorder. [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. Appellant has been receiving Medicaid covered services through the CMH since moving to Michigan from Arizona in the spring of [redacted]. Those services have included inpatient mental health services, outpatient assessments, supports coordination, treatment planning, behavioral services, occupational therapy, community living supports, and respite care. [redacted]

4. In addition to other services, Appellant also received speech services in his school in Arizona. [redacted]

5. After coming to Michigan, the CMH appeared to have authorized a speech evaluation in [redacted] However, it also appears that Appellant was waitlisted for that evaluation and his mother was suppose to follow on the waitlist. [redacted]

6. Appellant has been receiving speech services through his school. [redacted]

7. In [redacted] Appellant again requested a speech and language evaluation through the CMH. [redacted]

8. On [redacted], the CMH sent a notice to Appellant notifying him that his request for a speech and language evaluation had been denied. The stated reason for the denial was "Not medically necessary". [redacted]

9. The Michigan Administrative Hearing System (MAHS) received Appellant's completed request for hearing 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 speech evaluations and therapy, it provides:

> **3.22 SPEECH, HEARING, AND LANGUAGE**
>
> **Evaluation**
>
> Activities provided by a speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.
>
> (MPM, Mental Health and Substance Abuse Section,

January 1, 2012, page 21)

Therapy

Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).

Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.

Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a certified speech language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, licensed occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services may be provided by a speech-language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license). All documentation by the candidate must be reviewed and signed by the appropriately credentialed supervising speech-language pathologist or audiologist.

(MPM, Mental Health and Substance Abuse Section,
January 1, 2012, pages 21-22)

However, while speech evaluations or services may be authorized pursuant to the MPM, they must still be medically necessary. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. *See* 42 CFR 440.230.

With respect to medical necessity, the MPM provides:

> **2.5 MEDICAL NECESSITY CRITERIA**
>
> The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.
>
> **2.5.A. MEDICAL NECESSITY CRITERIA**
>
> Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:
>
> - Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
> - Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
> - Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
> - Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
> - Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.
>
> **2.5.B. DETERMINATION CRITERIA**
>
> The determination of a medically necessary support, service or treatment must be:
>
> - Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and

- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and

- Made within federal and state standards for timeliness; and

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and

- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and

- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services that are:

  > deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;

  > experimental or investigational in nature; or

  > for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or

- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services.

> Instead, determination of the need for services shall be conducted on an individualized basis.
>
> (MPM, Mental Health and Substance Abuse Section, January 1, 2012, pages 12-14)

Here, the CMH found that a speech and language evaluation was not medically necessary because Appellant is already receiving speech services through his school. Appellant's representative, on the other hand, argues that the services offered through the school are insufficient. For the reasons discussed below, this Administrative Law Judge finds that the CMH's decision should be affirmed.

It is undisputed that Appellant is receiving speech services through his school. [redacted]. Moreover, based on the language of the Individualized Education Program (IEP) developed by the school, it appears that the school's services were intended to meet Appellant's needs. For example, there is nothing in that IEP regarding Appellant needing other services. Likewise, there is no mention or attempt to coordinate the school's services with any services to be provided by the CMH, which is required before the CMH could authorize services:

> **SECTION 2 – PROGRAM REQUIREMENTS**
>
> **2.1 MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES**
>
> Mental health and developmental disabilities services (state plan, HSW, and additional/B3) must be:
>
> * * *
>
> - Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MIChoice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices) . . .
>
> (MPM, Mental Health and Substance Abuse Section, January 1, 2012, page 8)

Additionally, in the March 15, 2012 Communications Progress Report authored by the school's speech therapist (Exhibit 1, page 113), only Appellant's mother requested additional services through the CMH. The speech therapist did not make such a request and, instead, noted in part that:

> Pragmatically, [Appellant] is within functional limits at this time. He has a great sense of humor and can remain on

> topic during a conversation. He can take 2-3 conversational turns with 1-3 prompts. His attention is also judged to be adequate at this time.
>
> (Exhibit 1, page 113)

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred in denying the speech and language evaluation. However, given the language of the school's IEP, the lack of coordination of services, and the progress note authored by the school's speech therapist, Appellant has failed to meet his burden of proof in this case. Accordingly, the CMH's decision must be affirmed.

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 a speech and language evaluation.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 6-29-2012

***** 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.