

**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. 2012-47214 CMH
No. [REDACTED]

[REDACTED] Case
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], [REDACTED], [REDACTED]. [REDACTED] appeared and testified on Appellant's behalf, as did [REDACTED].

[REDACTED], represented Network180, the mental health authority for [REDACTED]. [REDACTED], appeared as witnesses for [REDACTED].

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] Medicaid beneficiary, born [REDACTED], receiving services through Network180, the mental health authority for [REDACTED] under the Children's Home and Community Based Waiver. (Exhibit C, p 1)
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. [REDACTED] Appellant's [REDACTED], brought Appellant to Network180 on [REDACTED] and met with clinician [REDACTED] LLMSW, for a screening for Home-Based and Intensive Services. Following the screening, [REDACTED]

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- [REDACTED] diagnostic impressions were : Oppositional Defiant Disorder, Mood Disorder NOS, Diagnosis Def Axis I + 2, Problems with Primary Support Group. (Exhibit C, p 5).
4. The Appellant has Blue Cross Blue Shield commercial insurance and Medicaid secondary insurance benefits. (Exhibit C, p 1)
 5. The Appellant lives at home with his adoptive [REDACTED] and [REDACTED]. (Exhibit C, p 1)
 6. The Appellant was last in school when he attended the [REDACTED] grade at [REDACTED] [REDACTED] (Exhibit C, p 1).
 7. On [REDACTED] [REDACTED] and [REDACTED] did a Continuing Care Plan as part of the referral of Home-Based services. [REDACTED] chose [REDACTED] [REDACTED], a contractor on Network 180's provider panel, to provide services to Appellant. (Exhibit D, pp 1-3)
 8. On [REDACTED] [REDACTED] clinician [REDACTED] LLMSW, completed a Summary and Diagnosis with Appellant and his [REDACTED]. His diagnostic impressions were: Reactive Attachment Disorder, Disinhibited Type; Mood Disorder NOS, with mixed features of depression and anxiety; Diagnosis Def on Axis II, Severe Hearing Loss, Significant Challenges with Emotional Regulation. (Exhibit E, pp 1-4)
 9. Mr. Aggeler's recommendation was that Appellant and his family engage in Home-Based services at least 7 hours per month for 4 months, such services to include individual and family therapy. Ms. Spencer agreed to receive services. (Exhibit E, p 4)
 10. [REDACTED] met with Appellant and/or his [REDACTED] times and then worked with them to develop an Individual Plan of Service (IPOS) on [REDACTED]. The IPOS included goals about improving relationships at home and maintaining a safe environment. (Exhibit F, pp 1-7)
 11. Following continued difficulties with Appellant, a meeting was held on [REDACTED] [REDACTED] in order to develop a home crisis plan. At that meeting, [REDACTED] indicated that she was not satisfied with the home-based options for services and wanted out-of-home placement for Appellant. Arbor Circle submitted a Residential Referral packet to Network180 on that same date. (Exhibit G, p 1)
 12. On [REDACTED], Appellant was placed in detention because of physically aggressive behavior and property destruction on [REDACTED] (Exhibit G, pp 5-6; Testimony)
 13. The Residential Committee met on [REDACTED] and denied the request for Residential Treatment and recommended that home and community based services continue. An Adequate Notice of Action was mailed to [REDACTED] on

██████████ indicating that the denial was based on a lack of medical necessity and that Appellant was able to access ██████████, ██████████, and increased Respite, if needed. (Exhibit I, pp 1-2)

14. On ██████████ requested a local appeal. The case was reviewed by Network180 Access Center employee ██████████. She affirmed the denial of residential services due to the following:

- Appellant had been in service for less than 8 weeks at the time of the request.
- Appellant had not had any mental health services prior to the request in ██████████
- Pharmaceutical intervention had not been explored or used.
- There had not yet been enough time to establish a working relationship with Appellant and his ██████████
- There had not yet been adequate time to build on strengths such as school.
- Other resources needed to be considered before authorizing Residential Treatment.

(Exhibit J)

15. On ██████████ sent ██████████ a letter indicating that there was a lack of medical necessity for the service of Residential Treatment and that the denial of the request for Residential Treatment had been upheld. (Exhibit K).

16. On ██████████ filed a Request for Hearing due to the denial of Residential Treatment on ██████████ (Exhibit 2)

17. The Michigan Administrative Hearing System received Appellant's request for hearing on ██████████ (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.

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Title XIX of the Social Security Act, enacted in [REDACTED] 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. 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.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Sections 2.5.C and 2.5.D* provide:

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. (Emphasis added)

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,

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determination of the need for services shall be conducted on an individualized basis.

Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, July 1, 2011, pages 13-14.

testified that in their system they have child caring institutions and one children's therapeutic group home, argued that they are not allowed to use Medicaid dollars in the child caring institutions because those institutions are not covered by Medicaid. As such, indicated that the Tribunal would not have jurisdiction to hear the matter in regards to placing Appellant in a child caring institution. However, indicated that Network180 was willing to go forward on the matter with regard to Appellant's residential placement at

, testified that brought Appellant to Network180 on and met with clinician LLMSW for a screening for Home-Based and Intensive Services. indicated that on did a Continuing Care Plan as part of the referral of Home-Based services. chose a contractor on Network 180's provider panel, to provide services to Appellant. testified that completed a Summary and Diagnosis with Appellant and his and recommended that Appellant and engage in Home-Based services at least 7 hours per month for 4 months, such services to include individual and family therapy. indicated that met with Appellant and/or his 5 times and then worked with them to develop an Individual Plan of Service (IPOS) on The IPOS included goals about improving relationships at home and maintaining a safe environment.

testified that following continued difficulties with Appellant, a meeting was held on in order to develop a home crisis plan. At that meeting, indicated that she was not satisfied with the home-based options for services and wanted out-of-home placement for Appellant. Arbor Circle submitted a Residential Referral packet to Network180 on that same date. (Exhibit G, p 1)

also testified that the Residential Committee met on and denied the request for Residential Treatment and recommended that home and community based services continue. An Adequate Notice of Action was mailed to , indicating that the denial was based on lack of medical necessity and that Appellant was able to access Psychiatric Services, Community Living Supports, and increased Respite, if needed. indicated that on requested a local appeal and the case was reviewed by Network180 Access Center employee MA, LBSW, on She affirmed the denial of residential services.

a letter indicating that there was a lack of medical necessity for the service of Residential Treatment and the denial of the request for Residential Treatment had been upheld. (Exhibit K).

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██████████ testified that Appellant is a danger to himself, his family and the community. ██████████ testified that Appellant is a habitual runaway, who enters neighborhood homes and steals from them. ██████████ indicated that Appellant repeatedly threatens to kill her and his siblings and did try to kill his ██████████ by holding his head under water, trying to drown him. Appellant has also threatened to set the house on fire, then go out his window and leave the rest of the ██████████ die in the fire. Appellant has also pulled the electrical wires out of the sockets in his room and told his ██████████ he was trying to set the house on fire. Appellant has physically assaulted all members of the household and uses whatever he can get his hands on to use as a weapon. ██████████ testified that Appellant destroyed the carpet in his room by peeing under the bed and that he has put holes in walls all over the house and garage, using various implements, even once using his brother's head. ██████████ indicated that Appellant has admitted in counseling to all of these behaviors and shows no remorse for his actions. When asked why he tried to drown ██████████ Appellant indicated that ██████████ wanted to die and that he didn't like ██████████ Appellant also threatened to blow up the house by breaking the gas line, while holding the gas in his hands. ██████████ testified that after four months in juvenile detention, Appellant was placed at ██████████ (a ██████████ by the Juvenile Court. ██████████ testified that she would like Network180 to be financially responsible for all of her out-of-pocket expenses from the time Appellant was placed at ██████████ until the time he is released. ██████████ testified that the Home-Based services Appellant had been receiving were not working and did nothing to keep her, her family, or the community safe.

██████████ also submitted a neuropsychological evaluation of Appellant completed by Behavioral Resources and Institute for ██████████. The author of the report recommended that residential placement be seriously considered and that a medication consultation with a child psychiatrist be set up. The author also recommended various behavioral approaches for dealing with Appellant. (Exhibit 1)

Finally, the record was held open for Appellant to submit photographs that she was unable to fax. The photographs were received on ██████████. The first photograph shows threatening statements that Appellant wrote on the walls of his home, the remaining pictures show physical damage that Appellant has done to the home, as well as the placement of the gas line Appellant was holding onto when he made the threat discussed above. (Exhibit 3).

Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant, specifically his own home. Clearly, Appellant's placement in his own home is less restrictive than any residential placement. Furthermore, as noted above, "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." Here, Appellant had only been receiving services in his home for 8 weeks at the time he was sent to juvenile detention. While there were clearly many difficulties during that time period, it cannot be said at this time that this less restrictive level of treatment has been unsuccessful.

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Furthermore, based on the Department's covered services policy, Section 14 of the Medicaid Provider Manual, long-term residential placement is not a Medicaid covered service under the Children's Waiver. Additionally, long-term residential placement is not a covered service under the Children's Waiver Technical Assistance Manual and it does not appear as a covered service on the Children's Waiver application. And while Children's Waiver services are simply an enhancement to regular Medicaid services, which contemplate inpatient services, those services cannot be provided to Appellant at this time through the Children's Waiver because, as discussed above, Appellant does not meet the medical necessity criteria for residential placement. Network180 also indicated that they do have the availability of residential placement at [REDACTED], should that become necessary in the future.

Finally, this Administrative Law Judge must base his decision on information the Department had on hand when the denial of long-term residential placement was made. Hence, information provided by the Appellant regarding incidents that occurred after [REDACTED] Appellant's placement by the [REDACTED] cannot be a basis for the decision in this matter. The Agency, of course, is free to consider that information and revisit their denial at any time.

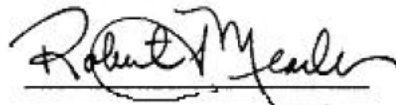
The Appellant bears the burden of proving by a preponderance of the evidence that residential placement is a medical necessity in accordance with the Code of Federal Regulations (CFR). The Appellant did not meet the burden to establish that such placement was a medical necessity at the time the decision was made on [REDACTED].

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.



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

cc: [REDACTED]

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Date Mailed: _____

***** 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.