

**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. 2012-49372 CMH

██████████

██████████

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 ██████████. Appellant's adoptive parents, ██████████ and ██████████ appeared and testified on Appellant's behalf.

Attorney ██████████, Assistant Corporation Counsel represented the ██████████ County Community Mental Health (CMH). Dr. ██████████ 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 ██████ year old Medicaid beneficiary, DOB: ██████████, ██████████ Appellant is enrolled in Medicaid and Midwest, a Medicaid Health Plan, but not in any specialty Medicaid Waivers administered by the ██████████ County Community Mental Health (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: psychotic disorder NOS; reactive detachment disorder of infancy or early childhood, PTSD, ADHD, schizophrenia-paranoid type, oppositional defiant disorder, and conduct disorder. Appellant's diagnoses qualify her as a child with a

serious emotional disturbance. (Exhibit 1, Attachments D, F, G, I and testimony).

4. Appellant currently lives in the family home with her adoptive parents and five siblings. Appellant has been attending ██████████ School in ██████████ in a fifth grade classroom for students with emotional impairment. Appellant started half days and was to progress gradually to full days. (Exhibit 1, Attachments E-H, Exhibit 2; and testimony).
5. On ██████████, the CMH sent an Adequate Action Notice to the Appellant's adoptive father notifying him that children's residential services were denied effective ██████████ as the services authorized are sufficient to meet the treatment goal outlined in Appellant's person centered plan. The notice included rights to a Medicaid fair hearing. (Exhibit 1 & Attachment A).
6. MAHS received Appellant's request for a hearing on ██████████. (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

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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*.

██████████, a fully licensed psychologist with the CMH testified that Appellant a ten year old has been given variety of diagnoses including psychotic disorder NOS; reactive detachment disorder of infancy or early childhood, PTSD, ADHD, schizophrenia-paranoid type, oppositional defiant disorder, and conduct disorder. ██████████ ██████████ stated Appellant's diagnoses qualify her as a child with a severe emotional disturbance. She stated Appellant is currently attending school. Appellant has been receiving Medicaid covered services since ██████████

██████████ stated Appellant had also been diagnosed with borderline intellectual functioning, but that is an incorrect diagnosis for the Appellant. ██████████ stated in ██████████, testing at Hawthorne Center showed a score of 81 which puts her in

the low average range, not a person with borderline intellectual functioning. Accordingly, Appellant is not a person with a developmental disability.

██████████ 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 Appellant's diagnoses qualify her as a child with a serious emotional disturbance, and therefore Medicaid funds cannot be used to pay for long-term residential placement for the Appellant.

██████████ stated that in her opinion the Appellant's needs can be met with the Medicaid services that are currently being provided in the community including; behavioral services, CLS, home based services, therapy, respite services, and hospitalization for acute distress when needed. Dr. ██████████ noted that Appellant's records show she is able to function in the community, i.e., at school. Dr. ██████████ stated with the various Medicaid services being provided, it was her opinion that the Appellant's needs could be served in a less restrictive setting within the community.

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

2.3 LOCATION OF SERVICE

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;
- 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). (Emphasis added).

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

██████████ and ██████████ Appellant's adoptive parents both testified during the hearing in support of their request for long term residential placement for the Appellant. Ms. ██████████ stated they currently receive Medicaid services seven days per week, at least five hours per day and it is not enough. She stated Appellant threatens to kill the other five children in the home. Ms. ██████████ stated they have to fight with Appellant to keep her from hurting one of the other children, and they lock her in her bedroom at night. The other children have been hospitalized for their own mental health issues caused by the Appellant. Ms. ██████████ stated her ██████████ year olds draw picture showing how the Appellant is going to kill them.

Ms. ██████████ indicated it is too hard on the CLS workers who have to deal with the Appellant, so they have to be rotated. Ms. ██████████ indicated Appellant tells her therapist weekly she wants to kill everyone in her family. She further indicated that Appellant wanted to get protective services to remove the other children from the home so it would just be her and her parents in the home. Ms. ██████████ believes that the Appellant is trying to get rid of the other kids one at a time. She stated all of the children see therapists and two are on medication, all because of the Appellant's behavior which is nonstop. Ms. ██████████ stated that Appellant does not display bad behavior at school because they do not make her do any work at school and she sleeps through her classes.

Mr. ██████████ indicated that they continually tell everyone involved in Appellant's care that they feel they are being set up to become a statistic. He stated things are getting worse, yet the Appellant is allowed to continue living in the home. They are told that Medicaid does not pay for long term residential services. It is scary to live in this situation with the Appellant in their home. Mr. ██████████ stated that are told they just have to deal with the situation, until something happens. Mr. ██████████ concluded by saying that he just wanted it on record that they are doing whatever they can, so when and if something happens, it is on record that they did what they could do.

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 she meets the criteria for residential placement in accordance with the Code of Federal Regulations (CFR). Appellant has not met this burden to establish that she meets the criteria for such a placement. CMH has shown that there are services available in the

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community which they believe can assist the Appellant and her family in dealing with mental health and related behavioral problems.

The Appellant's adoptive parents have demonstrated quite clearly that the Appellant is a child with a severe emotional disturbance as indicated by CMH. 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

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

cc:



Date Mailed: 5-23-12

***** 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.