

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-50346 CMH
Case No. ██████████

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 was held on ██████████. Appellant's ██████████ appeared and testified on behalf of Appellant. Appellant was also present during the hearing, but did not testify.

██████████, Assistant Corporation Counsel, represented the Macomb County Community Mental Health Authority (CMH). ██████████, CMH Access Center Manager, appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for long-term children's 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. Appellant is a ██████████ who has been diagnosed with bipolar disorder, attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), reactive attachment disorder, and asthma. ██████████
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, including inpatient mental services, outpatient mental health services, and partial hospitalizations. ██████████

4. In [REDACTED] Appellant [REDACTED] requested, on Appellant's behalf, that he be placed specialized residence for children. [REDACTED]
[REDACTED]
5. On [REDACTED] the CMH sent a notice to Appellant notifying him that the request for long-term children's residential placement had been denied. The stated reason for the denial was that "Services authorizes [sic] are sufficient to meet the treatment goals outlined in the plan".
[REDACTED]
6. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a request for a hearing on the denial filed on behalf of Appellant.
[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.

Here, no disputes that Appellant has a need for services and he has continually been receiving assistance through the CMH. The request that Appellant be placed specialized residence for children was denied however.

With respect to the location of services, the Medicaid Provider Manual (MPM) used in Michigan states:

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).

(MPM, Mental Health and Substance Abuse Section
April 1, 2012, pages 9-10 (emphasis added))

In this case, ██████████ testified that, with the exception of asthma, Appellant's diagnoses (bipolar disorder type 1, attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD)) qualify as serious emotional disturbances under the MPM. ██████████ also testified that Appellant's conditions are not development disabilities.

Similarly, the testimony and reports of Appellant's ██████████ demonstrate Appellant's serious emotional disturbances. According to her, Appellant is violent and out-of-control. He is spiraling out of control and needs help. ██████████ cannot keep themselves, Appellant or Appellant's ██████████ safe. Appellant also requires frequent, temporary hospitalizations and he does well when in the hospital. The behavior is getting worse, yet the Appellant is allowed to continue living in the home and she was told that Medicaid does not pay for long-term residential services.

As provided above, 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.

Appellant bears the burden of proving by a preponderance of the evidence that he meets the criteria for residential placement in accordance with the Code of Federal Regulations (CFR). Here, however, Appellant has failed to meet that burden. The evidence in the record demonstrates quite clearly that the Appellant is a child with a severe emotional disturbance as indicated by CMH and, based upon the clearly stated

policy in the MPM, Medicaid cannot pay for such residential services for a child with a serious emotional disturbance. 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 home-based services.

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: 7-13-2012

***** 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.