

**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. 2012-51453 CMH
Case No. ██████████

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 ██████████. Appellant's ██████████ appeared and testified on Appellant's behalf. ██████████, ██████████ appeared on behalf of the ██████████. ██████████ also appeared as a witness for the ██████████.

ISSUE

Did the ██████████ properly deny Appellant's request for an 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. The ██████████ is under contract with the ██████████ to provide Medicaid covered services to people who reside in the ██████████ service area.
2. Appellant is an ██████████ (Exhibit 1, page 4) who is insured through both a private company and ██████████ (Exhibit 1, page 20; Testimony of ██████████).
3. On ██████████ Appellant's school sent a letter stating that he was being suspended from school for one day "for biting a student at school." (Exhibit 1, page 2).
4. During subsequent proceedings in the ██████████ of ██████████ involving parenting time between Appellant's ██████████ Appellant's ██████████ requested that Appellant be evaluated at ██████████ (██████████) for Appellant's aggressive behavior. (Exhibit 1, page ██████████).

- 3).
5. On April 4, 2012, the referee in that matter issued a recommendation stating that Appellant should be evaluated through ██████████ because of the biting incident and another incident where Appellant got into a fight with his sister. (Exhibit 1, page 3).
6. On ██████████ Appellant's ██████████ telephoned ██████████ and requested an evaluation. However, ██████████ staff advised Appellant's ██████████ that it could not evaluate Appellant through Appellant's primary insurance because there is a large deductible and co-pay that it could not collect due to its contract with the state of Michigan. (Exhibit 1, page 20).
7. Starfish staff also advised her that, given the circumstances, it could not evaluate her son through her Medicaid unless he met the criteria for mental health services. (Exhibit 1, page 20).
8. Later on ██████████ ██████████ telephoned the ██████████ on behalf of Appellant and he was screened for services. (Exhibit 1, pages 4-10; Testimony of ██████████).
9. The screening was over the telephone with Appellant's ██████████ and Appellant did not participate. (Testimony of ██████████).
10. During the screening, Appellant's ██████████ did not report all of the issues or problems she believes Appellant has. (Testimony of ██████████).
11. That same day, the ██████████ sent Appellant a written notice that it was denying his request ██████████ services because he was not eligible for such services. (Exhibit 1, pages 11-12).
12. On ██████████ the referee recommendation was adopted as an Interim Order by ██████████ (Exhibit 3, page 1).
13. On ██████████ Appellant's ██████████ requested a local appeal from the denial. (Exhibit 1, pages 13-14).
14. Appellant's ██████████ did not submit any additional information in support of her local appeal. (Exhibit 1, page 15; Testimony of ██████████).
15. On ██████████ the ██████████ received a Request for Hearing filed on behalf of Appellant. (Exhibit 2, page 1).
16. On ██████████ Appellant's local appeal was denied by ██████████ on the basis that Appellant "does not present with a present with a qualifying diagnosis and/or the severity of symptoms required by the Michigan Mental Code . . . in order to qualify for ██████████

[REDACTED] f or Severely Mentally Ill, [REDACTED] of
[REDACTED] (Exhibit 1, pages 16-17).

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 [REDACTED] and [REDACTED] the [REDACTED] operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

The [REDACTED], Mental Health/Substance Abuse Section, articulates the relevant policy regarding eligibility for mental health services, including psychiatric evaluations, and a beneficiary must meet the eligibility requirements for services. With respect to eligibility, the MPM states:

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 he cannot demonstrate that he 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.

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(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, the ██████████ did not make the initial decision to deny services or the subsequent denial of Appellant's local appeal. However, she did review those decisions and agrees with them for the reasons offered by the people who actually made the decisions.

During the hearing, ██████████ testified that, per its records, the ██████████ screening of Appellant revealed no definitive diagnoses for Appellant. Similarly, the ██████████ screening failed to identify any mental health services Appellant was receiving or any medications he is on. Instead, the ██████████ found that Appellant has merely had a couple of behavioral disturbances, including one incident where he bit a classmate. There are no chronic or severe problems, and Appellant is functioning normally.

In response, Appellant's ██████████ argued that she knows Appellant does not have a specific diagnosis or treatment yet, but that the whole point of requesting an evaluation is to get such a diagnosis and determine if treatment is necessary. She is not a doctor and cannot diagnose or address Appellant's issues on her own.

Appellant's ██████████ also testified that, while Appellant has aggressive behaviors, his problems go beyond a few instances of aggressive behavior. For example, Appellant was developmentally delayed, especially in the areas of speech and language, and he attended special education until the second grade. He also acts like a younger child or

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baby at times. He is separated from at least one parent at all times given the parents' [REDACTED] and reacts poorly to that separation.

Appellant's [REDACTED] further argues that much of the information recorded in the clinical screening is incorrect or incomplete. However, she also concedes that much of that information was given to the screener by her. She could explain why she answered "no" to a number of questions why the answer should have been "yes". With respect to other incorrect or incomplete answers, [REDACTED] does not recall what she said during the screening.

Appellant bears the burden of proving by a preponderance of the evidence that the [REDACTED] erred in denying the request for services. In this case, Appellant has failed to meet that burden of proof. This Administrative Law Judge's jurisdiction is limited to reviewing the [REDACTED]'s decision in light of the information available at the time it made its decision. Here, that information was provided by Appellant's [REDACTED] and it clearly demonstrates that, while he has been aggressive at times, he did not meet the criteria for services. Therefore, the [REDACTED] decision must be affirmed.

To the extent Appellant's condition has worsened since the denial or his [REDACTED] has additional information she wants to provide, they must make a new request to the [REDACTED] for services. During the hearing, Respondent's representative and witness testified that Appellant and his [REDACTED] could make another request at any time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED] properly denied Appellant's request for services given the information available at the time it made its decision.

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]

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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.