

**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

████████████████████
Appellant

Docket No. 2012-56334 CMH
Case No. ██████████

_____ /

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 ██████████ ██████████ Benn, Appellant's ██████████ appeared and testified on Appellant's behalf. Appellant also appeared and provided testimony.

██████████ Fair Hearing Officer, Clinton-Eaton-Ingham Community Mental Health Authority (CMH or Department), represented the CMH. ██████████, Supervisor, Life Consultation; ██████████ Case Manager, Life Consultation; and ██████████, Senior Developmental Disability Clinician, appeared as witnesses for the Department.

ISSUE

Did CMH properly determine the Appellant was not eligible for CMH services?

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 ██████████ born ██████████. (Exhibit D, p 1).
2. Clinton-Eaton-Ingham CMH is responsible for providing Medicaid-covered services to eligible recipients in its service area.
3. The Appellant has been diagnosed with Dementia NOS; Attention Deficit Disorder; Bipolar Disorder, mixed type; Chronic Pain Disorder with psychological components; and Personality Disorder with borderline features. (Exhibit A, p 7; Testimony).
4. The Appellant is being prescribed the medications ██████████, ██████████ (Exhibit D, p 5).

Docket No. 2012-56334 CMH
Hearing Decision & Order

5. Appellant lives with his adoptive parents and adoptive siblings in a home in [REDACTED] (Exhibit D, p 1).
6. Appellant dropped out of school in the [REDACTED] grade but wishes to obtain his GED. Appellant was receiving special education services while in school. (Exhibit D, p 3)
7. Appellant was released from jail in [REDACTED] after being charged with attempted assault on a police officer and domestic violence. (Exhibit D, p 3; Testimony)
8. Appellant has a [REDACTED] old [REDACTED] who lives with her [REDACTED]. Appellant has supervised visitation one day per week. (Exhibit D, p 1)
9. Appellant reported that he was in a bus accident at age [REDACTED] which resulted in soft, deep, and lumbar strain, leg discrepancy and a migraine. Appellant reported that since the accident he has been diagnosed with PTSD, kidney, liver, hip, shoulder, and neck problems. Appellant reports that he is in chronic pain since the accident. Appellant's nerve damage and leg discrepancy makes mobility difficult. Appellant uses a cane and occasionally a wheel chair. (Exhibit D, p 2)
10. On [REDACTED], [REDACTED], [REDACTED] a CMH Developmental Disability Clinician performed an eligibility assessment with Appellant. (Exhibit D, pp 1-18).
11. Following the assessment, [REDACTED] concluded that Appellant did not meet the eligibility criteria to receive CMH-CSDD services because he did not meet the Michigan Mental Health Code definition of a person with a developmental disability. Specifically, [REDACTED] found that Appellant only had a substantial functional limitation in the area of mobility. (Exhibit D, p 11)
12. On [REDACTED] CMH sent Appellant an Adequate Notice for Denial of Service, explaining why his request for services had been denied. (Exhibit E, pp 1- 2). In response, Appellant's [REDACTED] requested that a second opinion assessment be conducted. (Exhibit F)
13. On [REDACTED], [REDACTED] a CMH Certified Rehabilitation Counselor, completed a second assessment. (Exhibit H, pp 1-18). Following that assessment, [REDACTED] also concluded that Appellant did not meet the eligibility criteria to receive CMH-CSDD services. [REDACTED] noted:

Based on review of available clinical documents, clinical interview, history and ICAP results, [REDACTED] has a condition that is attributable to a mental or physical impairment that manifested before age 22. Given that many of the clinical factors that [REDACTED] experiences may be removed through appropriate treatment, such as substance abuse treatment, following physician orders and taking medications as prescribed, it is not likely that the condition will continue indefinitely. [REDACTED] does not have substantial functional

limitations in the following areas: self care, receptive/expressive language, learning, mobility, capacity for independent living, or economic self-sufficiency. [REDACTED] does have substantial functional limitations in the following areas: self direction.” (Exhibit H, p 12)

14. On [REDACTED] the CMH sent an Adequate Notice of Action to the Appellant indicating he was not eligible for CMH services. The CMH notice indicated: “Specifically the second opinion evaluation concurred with the original assessment that [REDACTED] does not have substantial limitation in three areas.” (Exhibit I).
15. The Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED] (Exhibit 1).

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 she 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 sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. Clinton-Eaton-Ingham County CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible.

The CMH Representative indicated that the Michigan Mental Health Code definition of developmental disability was utilized by CMH to determine Appellant was not eligible for CMH services. That definition provides, in pertinent part:

(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.
- (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.

MCL 330.1100a

The CMH representative also indicated that they relied on the CMHA-CEI Operating Guideline 9.1.2, Operational Definition of Developmental Disability, to reach their decision. That Guideline provides, in pertinent part:

For purposes of eligibility, CSDD uses the following definitions for adaptive functioning areas as specified in the Mental Health Code:

- A) Self Care: Individual needs significant (substantial) assistance in the areas of eating, toileting, bathing, grooming, dressing, transferring, ambulation, and assistance with self administered medication.
- B) Receptive/ Expressive Language: Ability to comprehend and express information through symbolic behaviors (spoken word, written word, sign language, graphic symbols) or non-symbolic behaviors (facial expression, body movement, touch, gesture)
- C) Learning: Cognitive abilities and skills related to learning at school or through other settings which allows one to acquire functional skills for independent living.
- D) Mobility: Ability to travel in the community in order to obtain services from community businesses, public facilities and churches or synagogues.
- E) Self-Direction: Skills related to making choices, learning and following a schedule. The ability to initiate activities appropriate to the setting and condition including seeking assistance when needed.
- F) Capacity for Independent Living: Skills related to functioning safely within a home and nearby neighborhood and being able to communicate needs for assistance within the home and community setting. This area is not considered for children under 18 years of age.
- G) Economic Self-Sufficiency: Ability to support oneself through gainful employment or having income through a trust, annuity,

pension or entitlement program such that the individual may choose not to work and maintain a basic standard of living. An individual enrolled in a full time school or training program would be considered economically self sufficient. This area is not considered for children under 18 years of age.

(Exhibit C, p 3)

██████████ Developmental Disability Clinician for CMH, testified that she is a Licensed Masters Social Worker (LMSW) and has been working in the area of developmental disability for two and one-half years. ██████████ testified that she conducted the initial assessment of Appellant and determined that he did not qualify for services. ██████████ determined that the only substantial functional limitation Appellant had was in the area of mobility. ██████████ made the following determinations in her assessment:

- A) Self Care: ██████████ does not qualify for self-care. He reports that he is able to groom, toilet, eating (sic), dress, transfer, and ambulate independently.
- B) Receptive/ Expressive Language: ██████████ does not qualify for receptive/expressive language. While ██████████ reports that he participated in speech services as a child, he does not currently have any language deficiency. He is able to communicate his wants and needs verbally, (through) non-symbiotic behaviors, or through written communication.
- C) Learning: ██████████ does not qualify for learning. His most recent neuropsychological evaluation placed his full scale IQ at 80. This is a low average IQ, but does not affect his ability to learn or develop functional skills for independent living.
- D) Mobility: ██████████ does qualify for mobility. He requires assistive devices (braces, cane and wheel chair) to ambulate in the community. ██████████ reports that he does have a drivers license, but was advised not to drive.
- E) Self-Direction: ██████████ does not qualify for self-direction. Due to his depression and PTSD, he has a lack of motivation; however, he is able to seek assistance when needed. He is able to take his medication as prescribed, understand when he needs to seek medical attention, and make medical appointments. ██████████ has had several jobs in the past and was able to follow a schedule; however, his physical limitations affected his ability to maintain employment.
- F) Capacity for Independent Living: ██████████ does not qualify for capacity for independent living. ██████████ reports to have lived in

his own apartment with his ex-fiance and his child prior to ending their relationship. ██████ substance use and depression make it difficult for ██████ to function; however, he is able to communicate his needs for assistance.

- G) Economic Self-Sufficiency: ██████ does not qualify for economic self-sufficiency. ██████ reports that he receives SSI and does not have a payee or guardian. He reports that his mother and ex-girlfriend would assist him in managing his finances.

(Exhibit D, pp 11-12)

██████████ Senior Developmental Disability Clinician testified that he has a Masters Degree in Rehabilitation Counseling and has worked in the developmental disability field for 23 years. ██████ testified that he conducted the Second Opinion assessment of Appellant on July 14, 2012 and also concluded that Appellant was not eligible for services. ██████ testified that the only substantial functional limitation Appellant had was in the area of self-direction. ██████ also testified that Appellant did not meet the Mental Health Code definition of developmental disability because it was not likely that Appellant's condition would continue indefinitely. ██████ explained in his assessment, "Given that many of the clinical factors that ██████ experiences may be removed through appropriate treatment, such as substance abuse treatment, following physician orders and taking medications as prescribed, it is not likely that the condition will continue indefinitely." (Exhibit H, p 12).

██████████ made the following determinations in his assessment regarding substantial functional limitations in the areas of major life activities:

- A) Self Care: ██████ does not qualify for self-care. He reports that he is able to groom, toilet, eat, dress, transfer, and ambulate independently. He does have some limitations in this area, but the limitations are not substantial.
- B) Receptive/ Expressive Language: ██████ does not qualify for receptive/expressive language. While he has some limitations in word choice, he is functionally literate and reports being able to speak and be understood.
- C) Learning: ██████ does not qualify for learning. While ██████ has received special education services, the actual services were limited to being able to use a calculator and extra time for completing assignments. ██████ reports being ready to complete his GED, as soon as various administrative and transportation barriers are taken care of.
- D) Mobility: ██████ does not qualify for mobility. He requires assistive devices (braces, cane, and wheel chair) to ambulate in the community, but has those devices available. He relies on

his mother to drive him to various places, as he was advised not to drive, but this limitation is due to his choice of residence. If ██████ lived in an area with more accessible public transportation he reports being able to use that service. ██████ currently has limits, but not substantial limits.

- E) Self-Direction: ██████ does qualify for self-direction. ██████ has substantial problems with setting and following a schedule. He also has substantial limitations in the area of making judgments about his environment, following medical advice and making judgments about social and interpersonal relationships. He is currently using a payee for his SSI benefits, and his money management skills are unknown at this time.
- F) Capacity for Independent Living: ██████ does not qualify for capacity for independent living. ██████ has the functional skills to live in his current setting with his current natural supports. He has lived independently in the past, with natural supports, limited by his problems with self direction. ██████ reports having the skills to live independently again, given supports for making decisions.
- G) Economic Self-Sufficiency: ██████ does not qualify for economic self sufficiency. ██████ and his mother report that ██████ receives SSI and food stamps. They have applied for housing for ██████ in various subsidized apartments in the Lansing metro area. His current income is sufficient to support him in his current environment and with supports from his mother he has engaged in good planning for living independently when the additional financial supports are available.

(Exhibit H, pp 11-12)

██████████ testified that he recommended that Appellant continue treatment for his physical condition, seek assistance with taking his medications as prescribed, and attend substance abuse counseling. ██████ opined that if Appellant followed those recommendations, it would help Appellant address his issues. Finally, ██████ testified that he wants Appellant to get the help that he needs and that he would assist Appellant and his mother in linking them with services providers that can provide this assistance.

██████████ Appellant's mother, testified that she has exhausted every possible avenue to get help for Appellant and that every organization she has approached for help has referred her to CMH. ██████ testified that Appellant was recently involved with the Courts in ██████ and that the psychologist who assessed Appellant there recommended that Appellant be put into a day program. With regard to ██████ opinion that Appellant's condition will improve, ██████ testified that she does not believe

Docket No. 2012-56334 CMH
Hearing Decision & Order

it. [REDACTED] indicated that Appellant was recently prescribed a shower seat (Exhibit 2) and that she hopes that this will demonstrate that Appellant has a substantial limitation in the area of self-care. [REDACTED] pointed out that Appellant was always in special education when he was in school and that both of Appellant's birth parents were mentally ill.

Appellant, [REDACTED] testified that he has had a long running learning disability and that he was always in special education classes when he was in school. Appellant testified that he received tutors for speech and math and to help him generally with his school work. Appellant indicated that he cannot drive.

Based on the competent and material evidence on the whole record, the Appellant failed to prove, by a preponderance of the evidence, that he met the Mental Health Code eligibility requirements for developmental disability. As indicated above, Appellant was assessed by two qualified professionals who both determined that Appellant did not have a substantial functional limitation in at least three areas of major life activities. In fact, both [REDACTED] and [REDACTED] determined that Appellant only had a substantial functional limitation in one area. [REDACTED] also concluded that Appellant's condition was likely not indefinite and should improve with proper treatment. While Appellant did present evidence that he recently was prescribed a chair for the shower, this alone does not amount to significant or substantial assistance in the area of bathing. Appellant can still bathe himself, he just needs a chair to sit on so that he is more stable in the shower. The CMH's denial of Appellant's eligibility as a person with a developmental disability was proper.

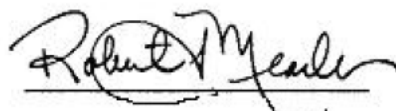
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The Appellant did not meet the Mental Health Code eligibility requirements for services provided by CMH for persons with a developmental disability.

IT IS THEREFORE ORDERED that:

The CMH's eligibility denial decision is AFFIRMED.



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

Case Name: Rousseau-Benn, Lucas
Docket No. 2012-56334 CMH
Hearing Decision & Order

cc:



Date Mailed: 8/23/2012

***** 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.