

**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. 2012-11754 CMH
Case No. 34974778

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant's parents, ██████████ and ██████████, appeared and testified on behalf of Appellant. Appellant and ██████████, Appellant's supports coordinator, also appeared as witnesses for Appellant. ██████████, Assistant Corporation Counsel, represented the ██████████ County Community Mental Health Authority (CMH). Dr. ██████████, CMH Access Center Manager, appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for speech and language therapy?

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 ██████ year-old who has been diagnosed with autism. (Exhibit 1, page 16).
2. Appellant lives with his parents, younger brother, paternal grandmother and paternal great-grandmother. He attends the special education program at ██████████ Elementary School. (Exhibit 1, pages 18-19).
3. 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.
4. Appellant has been receiving services through the CMH, including

supports coordination, respite care, speech and language therapy, occupational therapy, and behavioral services. (Exhibit 1, pages 19, 41-48).

5. Appellant started receiving speech and language therapy around ██████████. The therapy was subsequently authorized to continue through the summer of ██████████, during which time Appellant was not attending school. (Exhibit 1, pages 41-48; Testimony of ██████████).
6. Speech and language therapy was again requested for Appellant after the new school year began. (Exhibit 1, pages 39-40; Testimony of Dr. ██████████).
7. On ██████████, the CMH sent a notice to Appellant notifying him that the speech and language therapy request was denied because “[i]nterventions can be expected to be provided by another entity (teacher, RN, PT, OT, family member or caregiver)”. (Exhibit 1, pages 8-10).
8. The Department received Appellant’s Request for Hearing with respect to the denial on ██████████. (Exhibit 1, page 12).

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 C.F.R. § 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 C.F.R. § 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 U.S.C. § 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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

With respect to speech and language services, the Medicaid Provider Manual states:

3.20 SPEECH, HEARING, AND LANGUAGE

Evaluation

Activities provided by a speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.

Therapy

Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).

Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.

Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a certified speech-language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, registered occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services may be provided by a speech-language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license). All documentation by the candidate must be reviewed and signed by the appropriately credentialed supervising speech-language pathologist or audiologist.

(MPM, Mental Health and Substance Abuse Chapter,
October 1, 2011, page 21)

However, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 C.F.R. § 440.230. The MPM also describes the criteria the CMH must apply before Medicaid can pay for outpatient mental health benefits:

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals

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with relevant qualifications who have evaluated the beneficiary; and

- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.
- Documented in the individual plan of service.

(MPM, Mental Health and Substance Abuse Section,
October 1, 2011, page 13)

Here, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving by a preponderance of the evidence that the speech and language therapy is medically necessary. Accordingly, the CMH's decision to deny Appellant's request for such therapy must be sustained.

The CMH found that speech and language therapy was not medically necessary in this case because such services were already being provided by another entity. Specifically, Dr. ██████████ testified that, while Appellant received services through the CMH during the summer, he was now receiving speech and language therapy through his school and the CMH's services were no longer necessary. (Testimony of Dr. ██████████). Dr. ██████████ also testified that the school's services were essentially the same as those previously provided by the CMH. (Testimony of Dr. ██████████).

Moreover, as described by Dr. ██████████, there has been no coordination of benefits between the school and the CMH in this case. The Medicaid Provider Manual states, in part, that mental health services must be coordinated with school-based services providers among others

Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MIChoice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices).

(MPM, Mental Health and Substance Abuse Chapter,
October 1, 2011, page 8)

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Here, there is no evidence of any coordination of benefits between the CMH and the special education program at Appellant's elementary school. One speech therapy progress note does state that the "Skilled Therapist has reviewed client's Individualized Education Program (IEP), and the above stated goals do not duplicate services of the school system." (Exhibit 1, page 48). However, there is no specific discussion of coordination of benefits or an overall strategy for treatment. Coordination of benefits consists of direct evidence that both plans and service providers were considered together. (Testimony of Dr. ██████████). Additionally, as testified to by Dr. ██████████, the coordination of benefits is essential so that services are not unnecessarily duplicative or do not conflict with each other. (Testimony of Dr. ██████████).

Given the lack of coordination of benefits and the failure to comply with the required policy, the CMH is correct to expect speech and language services will be provided by the school and its decision to deny Appellant's request for speech and language therapy should be sustained. The school-based service provider have already taken Appellant's speech and language needs into account and developed services designed to fully meet those needs without any coordination of benefits.

In response, Appellant's father/representative testified that the speech and language therapy given at Appellant's school is insufficient to meet Appellant's needs and that he still requires one-on-one speech therapy through the CMH. (Testimony of ██████████). Appellant's father also testified that Appellant's school does not provide one-on-one speech therapy. (Testimony of ██████████). No other differences between the services were identified. (Testimony of ██████████).

Appellant's father further testified that the speech therapist at Appellant's school agrees that the school's services are inadequate, but could not say so without risking her job. (Testimony of ██████████). Accordingly, the IEP for Appellant from the school does not mention the need for any additional speech therapy and appears to intend that the school's services be sufficient. (Exhibit 1, pages 49-63). Moreover, the school's records provide that Appellant is progressing at a sufficient rate toward his speech therapy goals. (Exhibit 1, pages 67-69). As written by his speech therapist, "at sufficient rate" means Appellant is making sufficient progress at a rate she would expect for a child with his disabilities. (Exhibit 1, page 71).

Speech and language therapy have been recommended and requested for Appellant, but that request was denied. In accordance with the Code of Federal Regulations (CFR), Appellant bears the burden of proving by a preponderance of the evidence that he is entitled to speech and language therapy through the CMH. Here, given the above evidence regarding the speech therapy Appellant receives at school and the lack of coordination with the school's services, Appellant did not meet his burden in this case. Accordingly, the Waiver Agency's determination should be sustained.

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 speech and language therapy 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:



Date Mailed: 2/1/2012

***** 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.