

**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. 2012-11756 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 ██████████. ██████████, Appellant's mother, appeared and testified on behalf of Appellant, ██████████, who was also present but did not testify. ██████████, School Psychologist, ██████████, and ██████████, Advocate, ARC of ██████████ County, appeared as witnesses for the Appellant.

Attorney ██████████ appeared on behalf of ██████████ (CMH or Department). ██████████, Fair Hearings Officer, ██████████, Director of Customer Service/Intake, ██████████, Inc., and ██████████, Intake Specialist, ██████████, appeared as witnesses for the Department.

ISSUE

Did CMH properly determine that 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 an ██████████ year-old male, born ██████████. (Exhibit 1, p 2).
2. ██████████ CMH is responsible for providing Medicaid-covered services to eligible recipients in its service area.
3. The Appellant is diagnosed with Fetal Alcohol Syndrome, Attention Deficit Hyperactivity Disorder, Asthma, and has a congenital heart disorder

Case Name: [REDACTED]
Docket No. 2012-11756 CMH
Hearing Decision & Order

- (Tetralogy of [REDACTED]). (Exhibit 1, p 2).
4. The Appellant is being prescribed the medications Zyrtech (for allergies) and Adderall for ADHD. (Exhibit 1, p. 2).
 5. Appellant lives with his parents in a single family home in [REDACTED]. (Testimony).
 6. Appellant is a junior at [REDACTED] where he receives special education supports under the Otherwise Health Impaired rule and has a resource room teacher to help him with his academic work. Appellant attends [REDACTED] in the morning and then goes to [REDACTED] in the afternoon. Appellant is unsure what he wants to do after high school. (Exhibit 1, p 3).
 7. Appellant enjoys listening to music and is saving up for an iPod Touch. (Appellant has saved only [REDACTED] towards this goal since [REDACTED]). Appellant enjoys playing video games and reading informational books such as the Guinness Book of World Records or Ripley's Believe It or Not. Appellant is also a fan of Star Wars. (Exhibit a, p 3; Testimony).
 8. Appellant does not work and has never held a job. (Testimony).
 9. Appellant is not currently enrolled in [REDACTED] CMH services, but Appellant's mother has requested services through CMH for Appellant as a person with a developmental disability. (Exhibit 1).
 10. Following Appellant's mother's requests for services for Appellant, [REDACTED], Intake Specialist at [REDACTED], performed an assessment. [REDACTED] met with Appellant and his mother, reviewed school reports and reviewed a report from Appellant's primary care physician. However, [REDACTED] was not able to determine if Appellant was a person with a developmental disability so she referred him to [REDACTED] for psychological testing. (Testimony).
 11. Following the psychological testing, [REDACTED], M.S., L.L.P., of [REDACTED] authored a report dated [REDACTED] in which she concluded that Appellant did not meet the Mental Health Code Definition of a person with a developmental disability. (Exhibit 1 pp 2-12).
 12. On [REDACTED], [REDACTED] sent to Appellant an Adequate Notice of Action informing him that services were denied because testing had shown that Appellant was not a person with a developmental disability, as defined by the Mental Health Code. The Adequate Notice of Action informed Appellant of his right to a Medicaid Fair Hearing. (Exhibit 1, p1).
 13. On [REDACTED], Appellant's mother submitted a Request for Hearing, which was received by the Michigan Administrative Hearing

System on ██████████. In the Request for Hearing, Appellant's mother indicated:

██████ has substantial limitations precluding his independence in his self care, learning, self direction, capacity for independent living and economic self sufficiency. We can document and demonstrate that ██████ does not function independently in these areas. According to the Michigan Mental Health Code, this constitutes a developmental delay thereby qualifying him to receive services. (Exhibit 2).

14. Following the report authored by ██████████, Appellant's mother also requested a second opinion. ██████████, Director of Customer Services/Intake at ██████████, referred Appellant to ██████████ for more psychological testing and another assessment. (Testimony).
15. On ██████████, ██████████, M.A., L.L.P. of ██████████, authored another report following psychological testing in which she also concluded that Appellant did not meet the Mental Health Code Definition of a person with a developmental disability. (Exhibit 4).

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. [REDACTED] 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.

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Here, there was no dispute that Appellant has a “severe, chronic condition” that is “attributable to a mental or physical impairment” that “manifested before the individual is 22 years old” and is “likely to continue indefinitely”. The only dispute is whether Appellant’s condition results in substantial functional limitations in 3 or more of the listed areas of major life activity.

In the psychological assessment completed at [REDACTED] [REDACTED] concluded with regard to the substantial functional limitations contained in the Michigan Mental Health Code:

- (A) Self-care:** *No. Though his scores on the Vineland are low, he is able to take care of himself (eating, toileting, bathing, etc – his challenges do not represent a severe condition.*
- (B) Receptive and expressive language:** *No. [REDACTED] can understand what is said to him and communicate his thoughts and feelings. He can read and write. Problems in this area are not severe.*

- (C) Learning:** Yes and No. [REDACTED] receives resource room support for English and Math under the Otherwise Health Impaired (OHI) school classification. He is taking regular classes i.e. English, Chemistry, Algebra II.
- (D) Mobility:** No. [REDACTED] is ambulatory. He will probably take driver's ed in the Winter.
- (E) Self-direction:** No. [REDACTED] is a motivated individual who wants to do well. He would like to continue his education after high school, perhaps to become a veterinary technician.
- (F) Capacity for independent living:** No. It is felt that with continued education and support, [REDACTED] will be able to learn and apply the requisite skills necessary to live independently.
- (G) Economic self-sufficiency:** No. Again, with the correct vocational choice and training, it is felt that [REDACTED] will be able to be gainfully employed and self-sufficient. (Exhibit 1, p 8).

In the psychological assessment completed at [REDACTED], [REDACTED] concluded with regard to the substantial functional limitations contained in the Michigan Mental Health Code:

- (A) Self-care:** No. [REDACTED] is able to complete activities of daily living such as eating, drinking and toileting independently. He is independent in dressing undressing and bathing. Skills are below age appropriate as indicated by test scores from the parent completed adaptive inventory.
- (B) Receptive and expressive language:** No. [REDACTED] is able to communicate his ideas, needs and experiences in a clear and comprehensible manner. He sometimes answers questions that require careful thought and opinions and sometimes discusses current events.
- (C) Learning:** No. [REDACTED] general intellectual ability is within the low average range. His verbal ability [is] in the average range. Thinking ability [is] in the low average range and cognitive efficiency [is] within the borderline range. These scores are commensurate with previous test scores that were within average to low average ranges. Reading and reading comprehension skills are within the average range and a 12th grade equivalent. Math is an area of relative weakness. His skills are significantly below grade level. Anthony receives special education services under the eligibility of Otherwise Health Impaired as determined by his school evaluation

and records. This might impact his school progress and his ability to reach grade level proficiency, particularly in math. His difficulties do not present as severe limitation to his learning new skills. He has the aptitude to learn. Cognitive test scores do not support the diagnosis of a cognitive disability.

- (D) Mobility:** *No. [REDACTED] is ambulatory and presents with no limitations that might impact his ability [to] engage in normal daily activities that involve mobility.*
- (E) Self-direction:** *Yes and No. [REDACTED] has the aptitude to learn however his behavior and psychiatric difficulties, i.e. ADHD may adversely impact his ability to reach them. Though he has a tendency to be impulsive and inattentive, he presents as motivated to continue his education.*
- (F) Capacity for independent living:** *Yes and No. [REDACTED] is 18 years old and still in high school. He does have basic requisite skills for someone his age and has the aptitude/ability to learn more with instruction and guidance.*
- (G) Economic self-sufficiency:** *No. With continued education and training [REDACTED] has the aptitude to further his education and acquire skills for which he could be paid and be economically self-sufficient. (Exhibit 4)*

[REDACTED], Appellant's mother, testified that she believes Appellant has substantial limitations in five of the areas addressed in the Michigan Mental Health Code: self-care, learning, self-direction, capacity for independent living, and economic self-sufficiency. With regard to self-care, [REDACTED] testified that she documented Appellant's self-care routine from [REDACTED] to [REDACTED] and that during this period Appellant remembered to wash his face on two days and brush his teeth 18 nights and 9 mornings. [REDACTED] testified that Appellant only makes his bed once or twice a week with verbal reminders and requires verbal reminders to do all of his chores. [REDACTED] also testified that Appellant, if left on his own regarding what to eat, will choose peanut butter and pizza every time. [REDACTED] indicated that Appellant does not know the names of his doctors, the names of his medications, or when to take them. [REDACTED] testified that they cannot leave Appellant home alone for more than an hour and that they came home once to find the smoke alarm going off and Appellant in his room with his headphones on, trying to drown out the sound of the smoke alarms.

With regard to learning, [REDACTED] testified that Appellant still gets C's and D's in school, even though he gets substantial help via special education staff. [REDACTED] also provided letters from Appellant's teachers, in support of her assertion. (Exhibit 8). With regard to self-direction, [REDACTED] testified that this is the one area where Appellant's limitations are most pronounced. [REDACTED] indicated that Appellant shuts down when stressed and has no futures goals, except to be a slacker. [REDACTED] explained that

Case Name: [REDACTED]
Docket No. 2012-11756 CMH
Hearing Decision & Order

she coached Appellant to tell people he wanted to be a veterinary technician, so that he would stop telling people he wanted to be a slacker. [REDACTED] testified that Appellant is very isolated socially and does not socialize unless forced to do so. With regard to Appellant's capacity for independent living, [REDACTED] testified that he has a major cardiac medical condition, yet does not know the name of his doctor. [REDACTED] indicated that Appellant is not safe in the kitchen, is unable to do laundry without supervision, and cannot complete any household tasks unless those tasks are broken down into their most rudimentary elements. With regard to Appellant's capacity for economic self sufficiency, [REDACTED] testified that Appellant does not have any understanding of money and cannot complete simple tasks, like replacing an electrical receptacle, even after replacing five under supervision. [REDACTED] indicated that Appellant was surprised to learn that if he got his own apartment his parents would not be paying the rent.

[REDACTED], School Psychologist at [REDACTED], testified that Appellant has a complicated diagnostic profile that does not fit into a simple category. [REDACTED] indicated that Appellant scored much better on tests than he actually did in school. [REDACTED] explained that this result was likely due to the fact that testing is done on a one on one basis in a quiet, secure environment, while the classroom has numerous distractions. While [REDACTED] indicated that Appellant did not fit into the autism spectrum based on the school district's testing, Appellant's fetal alcohol syndrome has serious, life long effects. [REDACTED] pointed out that the [REDACTED] report indicated that Appellant is at a 12 grade level in reading and reading comprehension, yet Appellant was not tested for reading or reading comprehension by [REDACTED]. [REDACTED] also indicated that this finding was inconsistent with the school district's testing. [REDACTED] also pointed out that [REDACTED] used the same IQ test (The Woodcock-Johnson III Test of Cognitive Abilities) as the school district performed, which would not be the best practice for re-testing someone. [REDACTED] opined that [REDACTED] should have used a different IQ test in retesting Appellant.

Appellant also introduced a letter from his primary care physician, [REDACTED], M.D. [REDACTED] concluded:

[REDACTED] has been a patient of this practice since [REDACTED] * * * * I feel that given the degree of mental impairment, [REDACTED] would not be able to live independently, obtain employment, and be financially independent. I feel he will need to live and work with supervision the rest of his life. (Exhibit 6).

Appellant's Exhibit 7 is a written statement from [REDACTED] regarding her belief that Appellant does meet the Michigan Mental Health Code for developmental disability.

Appellant's Exhibit 8 contains letters from three of Appellant's teachers, all of whom opine that Appellant is not able to function independently in the classroom.

Case Name: [REDACTED]
Docket No. 2012-11756 CMH
Hearing Decision & Order

Appellant's Exhibits 9 and 10 are copies of Appellant's school grades for the current academic year. Appellant has received three A-'s, two B+'s, one B, three B-'s, one C+, four C's, one C-, two D's and one D-.

Appellant's Exhibit 11 is a letter from [REDACTED], CAGS, NCSP, Consulting Psychologist; [REDACTED], Teacher Consultant; [REDACTED] EdS, NCSP, School Psychologist; and [REDACTED], RRT; all from [REDACTED]. The letter concludes:

The diagnostic conclusion of the team was that the Fetal Alcohol Syndrome and comorbid ADHD best described [REDACTED] learning challenges. Symptoms of Fetal Alcohol Syndrome include poor social skills, learning difficulties such as poor memory, inability to understand concepts such as time and money, trouble understanding cause and effect, poor language comprehension, and poor problem solving skills. There are also associated behavior problems including hyperactivity, inability to concentrate, impulsivity, and anxiety. It is typical for these problems to intensify as a child gets older and clearly present challenges for employment, community skills, safety, and independent living.

Appellant's Exhibit 12 contains the results from a practice ACT test Appellant took in November 2011. Appellant scored in the 75th percentile in English, the 60th percentile in Math, the 40th percentile in Reading, and the 40th percentile in Science. Appellant recently took an actual ACT, but has not yet received the results.

Based on the competent and material evidence on the whole record, the Appellant has failed to prove, by a preponderance of the evidence, that he met the Mental Health Code eligibility requirements for developmental disability. Two professionals, [REDACTED] M.S., L.L.P., of [REDACTED] and [REDACTED], M.A., L.L.P. of [REDACTED] completed comprehensive psychological testing of Appellant and determined that he did not meet the Mental Health Code definition of a person with a developmental disability. Even counting as "Yes" the categories where the professionals rated Appellant as "Yes and No", Appellant only met one criteria in the testing completed by [REDACTED] and two in the testing completed by [REDACTED]. In addition, Appellant's actual grades in school do not suggest that he has a substantial limitation in the area of learning, even though Appellant receives assistance in school through special education. It appears that with the proper training and support, Appellant can succeed. Of course, this is not to suggest that Appellant does not have limitations; clearly he does. It is only to suggest that current psychological testing does not support a conclusion that Appellant has "substantial" limitations in three or more of the areas described in the Mental Health Code definition. If Appellant's condition worsens, or if, after high school, it turns out that he does have substantial limitations in areas such as economic self-sufficiency or capacity for independent living, Appellant can always be re-evaluated.

Case Name: [REDACTED]
Docket No. 2012-11756 CMH
Hearing Decision & Order

DECISION AND ORDER

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

The Appellant does 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

cc:

[REDACTED]

Date Mailed: 3/19/2012

***** 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.