

**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. 2012-3022 CMH
Case No. 77588659

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 guardian and mother, appeared and testified on behalf of Appellant. Appellant was also present during the hearing, but did not participate. ██████████, 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 payment for a Personalized Emergency Response System (PERS)?

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 male who has been diagnosed with severe mental retardation, Down Syndrome, and asthma. He is also nonverbal and unable to express his needs and wants to others. (Exhibit 1, Attachment D, pages 11, 20, 22).
2. Appellant lives with his mother/guardian and attends the special education program at ██████████ School. (Exhibit 1, Attachment D, page 17).
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.

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4. Appellant has been receiving services through the CMH, including supports coordination, respite care, community living supports (CLS), and occupational therapy. (Exhibit 1, Attachment E, pages 27-36). Appellant also receives Home Help Services through the Department of Human Services. (Exhibit 1, Attachment G, pages 54-59).
5. Appellant's mother requested PERS because, while she and Appellant live together and he is never alone, they are the only people in the home and she worries what would happen if there is an emergency and she is incapacitated. (Testimony of [REDACTED]).
6. On [REDACTED], the CMH sent a notice to Appellant notifying her that the request for PERS was denied because it was "[n]ot medically necessary." (Exhibit 1, Attachment A, pages 5-7).
7. The Department received Appellant's Request for Hearing on [REDACTED]. (Exhibit 1, Attachment B, pages 9-10).

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. The 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 PERS, the Medicaid Provider Manual states:

Personal Emergency Response Systems (PERS)

Electronic devices that enable beneficiaries to secure help in the event of an emergency. The beneficiary may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once the button is activated. The response center is staffed by trained professionals. This service includes a one-time installation and up to twelve monthly monitoring services per year.

PERS coverage should be limited to beneficiaries living alone (or living with a roommate who does not provide supports), or who are alone for significant parts of the day; who have no regular support or service provider for those parts of the day;

and who would otherwise require extensive routine support and guidance.

(MPM, Mental Health and Substance Abuse Section
October 1, 2011, page 88 (emphasis added))

In this case, as discussed above, Appellant's request for PERS was denied because the therapy was "[n]ot medically necessary." (Exhibit 1, Attachment A, pages 5-7). With respect to medical necessity, the Medicaid Provider Manual provides, in part, that:

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 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 CMH erred by denying the request for PERS. As clearly stated above, PERS "should be limited to beneficiaries living alone (or living with a roommate who does not provide supports), or who are alone for significant parts of the day; who have no regular support or service provider for those parts of the day; and who would otherwise require extensive routine support and guidance." (MPM, Mental Health and Substance Abuse Section, October 11, 2011,

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page 88). In this case, it is undisputed that Appellant does not live alone, his mother/roommate provides him with supports, and he is always supervised. Appellant's mother argues that Appellant would be helpless if something happened to her and that an exception to the MPM should be made here. However, this Administrative Law Judge does not possess equitable powers and is required to follow the policies of the MPM. Given those clear policies, Appellant does not meet the criteria for PERS and the CMH's decision to deny his request for such services 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 PERS.

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:



Date Mailed: 12/27/2011

***** 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.