

**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. 2012-3690 CMH
Case No. 89648796

██████████,

Appellant

_____ /

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 Wednesday, ██████████. Appellant's mother, ██████████, appeared and testified on Appellant's behalf.

Attorney ██████████, Assistant Corporation Counsel represented the ██████████ County Community Mental Health (CMH). ██████████, Ph.D., Manager for Clinical Services, appeared as a witness for the Department.

ISSUE

Did the CMH properly deny the Appellant's request for residential placement?

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 ██████ year old Medicaid beneficiary, born ██████████. Appellant is enrolled in Medicaid and the Great Lakes Health Plan, a Medicaid Health Plan, but not in any specialty Medicaid Waivers administered by the ██████████ County Community Mental Health (CMH). (Exhibit 1, p. 1, Attachments C, p. 12, D, p. 15, & E, p. 26).
2. 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.
3. The Appellant is currently diagnosed with a mood disorder not otherwise specified, oppositional defiant disorder, and cannabis and opioid abuse. Appellant is a child with a serious emotional disturbance and does not have a developmental disability. (Exhibit 1, pp. 1-2; Attachments D, pp. 21-22, & E, p. 35; and, Testimony).

4. The Appellant is currently involuntarily detained in the ██████ County Juvenile Justice Center, a Juvenile detention facility by order of the ██████ Circuit Court, Juvenile Division, for incorrigibility, substance abuse, aggravated assault and probation violation. While at the detention center Appellant is in a residential program receiving mental health treatment and behavioral interventions. He is receiving individual therapy once a week, group therapy twice a week, family therapy bi-weekly, and medication management. (Exhibit 1, p.1, Attachment G, p. 23; and, Testimony).
5. On ██████, the CMH sent a notice to the Appellant's mother notifying her that the request for residential placement was denied effective ██████ as the Appellant did not meet criteria for the services requested. (Exhibit 1, Attachment A, pp. 5-7).
6. MAHS received Appellant's request for an expedited hearing on October 19, 2011. (Exhibit 1, Attachment B, pp. 9-10, and Exhibit #2).

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...

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.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

██████████, a fully licensed psychologist with the CMH testified that Appellant was ██████ years old. He is diagnosed with mood disorder not otherwise specified, oppositional defiant disorder, and cannabis and opioid abuse. ██████████ stated Appellant has a severe emotional disturbance, and did not have a developmental disability.

██████████ stated under the pertinent policy in the Medicaid Provider manual Medicaid does not cover services provided to children with a severe emotional disturbance in a child-caring institution. ██████████ stated this covers any placement in a child-caring institution and not just a long term placement.

██████████ stated the Appellant is currently involuntarily detained in the ██████████ County Juvenile Justice Center, a juvenile detention facility. She stated according to the policy in the Medicaid Provider Manual, Medicaid does not cover services provided to children involuntarily residing in a juvenile detention facility. ██████████ stated the Appellant was adjudicated to the facility because of an assault, and other types of behavior he was involved with, including breaking probation, testing positive for opiates and incorrigibility.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.3* provides:

2.3 LOCATION OF SERVICE [CHANGE MADE 4/1/11]

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- Nursing facility mental health monitoring;
- Psychiatric evaluation;
- Psychological testing, and other assessments;
- Treatment planning;
- Individual therapy, including behavioral services;
- Crisis intervention; and
- Services provided at enrolled day program sites.

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

Medicaid does not cover services delivered in Institutions of Mental Disease (IMD) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is for the purpose of transitioning a child out of an institutional setting (CCI). The following mental health services initiated by the PIHP (the case needs to be open to the CMHSP/PIHP) may be provided within the designated timeframes:

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- Assessment of a child's needs for the purpose of determining the community based services necessary to transition the child out of a CCI. This should occur up to 60 days prior to the anticipated discharge from a CCI.
- Wraparound planning or case management. This should occur up to 60 days prior to discharge from a CCI.

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities). (revised 4/1/11) (Emphasis added).

Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, October 1, 2011, pages 9-10.

██████████, Appellant's mother testified that she contacted the CMH to try to get her son placed somewhere due to the behavior he exhibited while at the juvenile detention facility. She stated that if he were at home she would have taken him to the hospital for his behavior. ██████████ indicated she told the juvenile facility that the Appellant needed to be evaluated for treatment elsewhere, because their program was not intensive enough for her son. They disagreed because they said his problems were strictly behavioral.

██████████ said she was unaware that Medicaid did not pay for any long-term residential services. She said she wasn't looking for anything long term she just wanted to get some treatment for her son. ██████████ said she just wanted him moved to a proper facility based upon his diagnosis.

The relevant policy from the Medicaid Provider Manual establishes that Medicaid does not cover residential services provided to children with a serious emotional disturbance in a Child Caring Institution. The policy further provides that Medicaid does not cover services provided to persons/children involuntarily residing in juvenile detention facilities. Accordingly, the CMH acted properly to deny Appellant's request for some type of residential placement in a child-caring institution.

The Appellant bears the burden of proving by a preponderance of the evidence that he meets the criteria for residential placement in accordance with the Code of Federal Regulations (CFR). The Appellant did not meet the burden to establish that he met the criteria for such a placement. Furthermore, his placement in a juvenile detention facility prevents him from receiving any Medicaid covered services while he is so detained.



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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 residential placement.

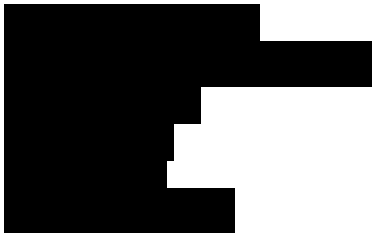
IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

CC:



Date Mailed: 10/28/2011

***** 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.