

**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. 2012-46138 CMH

██████████,

██████████

Appellant

_____ /

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 mother, appeared and testified on behalf of Appellant.

██████████ Assistant Corporation Counsel represented the ██████████ County Community Mental Health Authority (CMH). Dr. ██████████, CMH Clinical Services Manager, appeared as a witness for the CMH.

ISSUE

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

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 an ██████ year-old who has been diagnosed with Down syndrome, moderate cognitive impairment, cardiac issues, and expressive and receptive speech delay. (Exhibit 1, Attachment D).
2. Appellant lives with his parents and two older brothers, and attends Roberts Elementary School, in a full-day kindergarten in an Early Childhood Special Education Program. Appellant's current IEP with the Utica Community Schools provides for speech and language therapy in school, 20-30 minute sessions, 3 to 6 times per month. (Exhibit 1, Attachments D & P).
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 received services through the CMH, including supports coordination, community living supports (CLS), speech and language therapy, occupational therapy, physical therapy, and behavioral services. (Exhibit 1, Attachment E).
5. Appellant started receiving speech and language therapy in ██████████. The therapy was subsequently authorized to continue until ██████████ (Exhibit 1).
6. Speech and language therapy was again requested for Appellant for the time period of ██████████ to ██████████. However, 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.)” The CMH denial was upheld by Judge Kibit in a decision dated ██████████ (Exhibit 1, Attachment G).
7. On ██████████, CMH sent the Appellant’s family an Adequate Action Notice indicating that their current request for speech and language therapy and physical therapy were denied effective ██████████ as not being medically necessary beyond what was being provided in school. (Exhibit 1, Attachment A).
8. On ██████████ MAHS received Appellant’s Request for Hearing with respect to the denial of speech and language services. The request for hearing stated they were requesting speech services during the summer, as the Appellant does not receive such services from the school during the summer, and it was alleged that there is a significant decline in the Appellant’s speech when a break from school occurs. (Exhibit 1, Attachment B).

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,
3.20 Speech, Hearing, and Language, April 1, 2012, pp. 21-22)

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 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,
April 1, 2012, page 13)

Dr. ██████████ Ph.D., a fully-licensed psychologist with CMH testified that she reviewed the pre-hearing summary along with the Appellant's electronic records prior to the hearing. Dr. ██████████ stated the Appellant was an ██████ year old boy diagnosed with Down syndrome, moderate cognitive impairment, cardiac issues, and expressive and receptive speech delay.

Dr. ██████████ stated that according to the Medicaid Provider manual in order to receive speech and language services, the therapy must be medically necessary, anticipated to produce a result, an improvement or elimination of the stated problem in a reasonable length of time, the services must be coordinated with other community agencies, including school based services, and the services must be durable. Dr. ██████████ stated that the Appellant has received speech services through his school, ever since he began going to school.

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Dr. ██████████ stated she was involved in the Medicaid fair hearing back in December of 2011, which resulted in a finding that Appellant's prior request for Medicaid-covered speech and language services was not medically necessary. Dr. ██████████ stated the goals in the Appellant's IEP have remained the same since the hearing. Dr. ██████████ further stated the interventions used in the Appellant's therapy have remained relatively stable. The interventions also call for repetitive practice in the home with family members, and CLS workers could assist with the prescribed practice. Dr. ██████████ noted the Appellant's person centered plan does not show how services from the school would be coordinated with services from CMH. Dr. ██████████ stated there hasn't been a change documented in the in Appellant's records that would indicate a need for a new speech evaluation.

Dr. ██████████ stated the previous decision in Appellant's case denying additional speech and language services was based on the determination that the services being provided by the school was all that was medically necessary for the Appellant. Dr. ██████████ stated the CMH's decision remains the same, since there isn't any indication in the records that there has been any change at all in the Appellant's case. Dr. ██████████ opined that the services being provided by the school during the school year were adequate to serve the Appellant otherwise the school would have determined that an extended school year would be required for the Appellant.

Appellant's mother ██████████ testified the Appellant gets speech therapy at school, but she thinks he needs more individualized services. She stated he is improving, but is still delayed and is having trouble stringing words together and forming complete sentences. Ms. ██████████ testified after a break from school it takes the Appellant time to get back on track using his vocabulary. She stated he appears to regress.

Ms. ██████████ stated Nicholas is not in school during the summer and does not receive any speech services while not in school. She stated the school district does not provide year round services. Ms. ██████████ stated she believes the Appellant needs the services in the summer but the school district will not provide it. Ms. ██████████ stated the school will not approve any services during the summer even if there is a showing that the Appellant regresses in his speech and language skills during school breaks.

When Ms. ██████████ was questioned on whether the family is providing the repetitive practice in the home for the Appellant called for in the Appellant's intervention plan, she stated she has other children and she works outside of the home. Ms. ██████████ stated they try to work on the Appellant's speech and vocabulary. She stated she believes that there is a huge difference when a trained therapist works with the Appellant. Ms. ██████████ does not think that the repetitive practice outside of school is as helpful as a trained therapist.

Speech and language services have been requested for Appellant, but the request has denied by CMH as not medically necessary. Furthermore, the CMH has pointed out that there has been no change in the Appellant's case since additional services were denied and upheld by Judge Kibit in ██████████ of this year. Finally, judging from the

testimony of the Appellant's mother, it appears that any regression in the Appellant's speech and language skills during breaks from school may be attributable to the family not providing the repetitive practice in the home called for in the Appellant's intervention plan.

In accordance with the Code of Federal Regulations (CFR), the 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 availability of others to assist him in the home, Appellant did not meet his burden in this case. Accordingly, the CMH'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 during the summer.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

William D Bond

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

cc:



Date Mailed: 5-31-12

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***** 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.