

**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. 2012-59052 CMH
Case No. ██████████

Appellants

_____ /

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 ██████████ ██████████ Home Based Therapist, appeared on behalf of the Appellant. ██████████ Appellant's father, and ██████████, Appellant's mother, appeared as witnesses on Appellant's behalf.

██████████, Fair Hearings Officer, represented the Department's agent, Community Mental Health for Central Michigan (CMH). ██████████ Family Support Subsidy Coordinator, appeared as a witness for the CMH.

ISSUE

Was it proper for the CMH to deny Appellant's request for a Family Support Subsidy?

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 Medicaid beneficiary. (Exhibit 2, Testimony)
2. The Appellant resides with his parents in Midland, Michigan. (Exhibit 1, Testimony)
3. Community Mental Health of Central Michigan (CMH) is a Prepaid Inpatient Health Plan (PIHP) under contract with the Michigan Department of Community Health to provide Medicaid covered services to Medicaid beneficiaries who reside in the CMH service area.

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4. In early 2012, Appellant's family applied for a Family Support Subsidy. (Exhibit 1).
5. In [REDACTED] CMH sent Appellant notice that he did not meet the program qualifications for a Family Support Subsidy because his school classified him as Otherwise Health Impaired, an ineligible category for the Family Support Subsidy. (Exhibit 2).
6. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's request for an Administrative Hearing. (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.

In this case, the Appellants applied for the Family Support Subsidy. The Family Support Subsidy Program is created through the Michigan Mental Health Code, Public Act 258 of 1974. The purpose of the Family Support Subsidy is stated in the Michigan Mental Health Code:

330.1156 Family support subsidy program; establishment; purpose.

The director of the department shall establish a family support subsidy program. The purpose of the family support subsidy program is to keep families together and to reduce capacity in state facilities by defraying some of the special costs of caring for eligible minors, thus facilitating the return of eligible minors from out-of-home placements to their family homes, and preventing or delaying the out-of-home placement of eligible minors who reside in their family homes.

The eligibility criteria for the family support subsidy program are also contained in the Michigan Mental Health Code:

330.1157 Rules; creation and contents of application forms.

Sec. 157.

(1) Subject to section 114a, the department shall promulgate rules to implement sections 156 to 161. The rules shall include an adoption by reference of the standards and criteria used by the department of education in the identification of eligible minors. The department shall also consult with the department of education on the implementation and coordination of the family support subsidy program.

(2) The department shall create application forms and shall make the forms available to community mental health services programs for determining the eligibility of applicants. The forms shall require at least the following information, which constitutes the eligibility criteria for receipt of a family subsidy:

(a) A statement that the family resides in this state.

(b) Verification that the eligible minor meets the definition in section 100a.

(c) A statement that the eligible minor resides, or is expected to reside, with his or her parent or legal guardian or, on a temporary basis, with another relative.

(d) A statement that the family is not receiving a medical subsidy for the eligible minor under section 115h of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.115h of the Michigan Compiled Laws.

(e) Verification that the taxable income for the family for the year immediately preceding the date of application did not exceed \$60,000.00, unless it can be verified that the taxable income for the family for the year in which the application is made will be less than \$60,000.00. Emphasis added.

The Michigan Mental Health Code also outlines the situations in which the Family Support Subsidy can be terminated:

330.1159 Termination or denial of family support subsidy; hearing.

(1) The family support subsidy shall terminate if 1 or more of the following occur:

(a) The eligible minor dies.

(b) The family no longer meets the eligibility criteria in section 157(2).

(c) The eligible minor attains the age of financial documentation.

(2) The family support subsidy may be terminated by a community mental health services program if a report required by section 158(3) is not timely made or a report required by section 158(3)(a) is false.

(3) If an application for a family support subsidy is denied or a family support subsidy is terminated by a community mental health services program, the parent or legal guardian of the affected eligible minor may demand, in writing, a hearing by the community mental health services program. The hearing shall be conducted in the same manner as provided for contested case hearings under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. Emphasis added.

The administrative rules promulgated to implement the family support subsidy program provide in part:

R 330.1601 Definitions.

Rule 1601. As used in these rules:

(a) "Autistic impaired" means an eligible minor who is determined to have an eligibility category of autism pursuant to R 340.1715 and who is receiving special education services in 1 of the following programs:

(i) Programs for students with autism as specified in R340.1758(1).

(ii) Programs for students with severe cognitive impairment as specified in R 340.1738.

(iii) Programs for students with severe multiple impairments as specified in R 340.1748.

(b) "Month of eligibility" means the month the family member, for whom application has been made, meets the requirements for participation in the program, regardless of

the month the eligibility is verified by the community mental health program.

(c) "Severely mentally impaired" means an eligible minor who is determined to have an eligibility category of cognitive impairment pursuant to R 340.1705 and who shows development at a rate of approximately 4-1/2 or more standard deviations below the mean as determined through intellectual assessment.

(d) "Severely multiply impaired" means an eligible minor who is determined to have an eligibility category of severe multiple impairment pursuant to R 340.1714. [Mich Admin Code, Rule 330.1601]

R 330.1607 Diagnostic determination and classroom placement verification.

Rule 1607. (1) An applicant for the family support subsidy program shall provide written verification from the public school which the family member attends or would attend if the family member were in the public school system which shall report the diagnostic category recommended for the family member by the school's multidisciplinary evaluation team.

(2) If the family member has been recommended by the multidisciplinary evaluation team for the diagnostic category of autistic impaired, then the parent or legal guardian shall ensure that the written verification includes the classroom or program placement that is required for family members who are determined to be autistic impaired. [Mich Admin Code, R 330.1607]

The CMH representative began the hearing by asserting that the proper forum for an appeal of a denial of a Family Support Subsidy was the local Circuit Court. However, as indicated above in MCL 330.1159(c): "If an application for a family support subsidy is denied or a family support subsidy is terminated by a community mental health services program, the parent or legal guardian of the affected eligible minor may demand, in writing, a hearing by the community mental health services program. The hearing shall be conducted in the same manner as provided for contested case hearings under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws." Emphasis added. Given that hearings under the Michigan Administrative Procedures Act of 1969 are conducted by the Michigan Administrative Hearing System (MAHS), and not the local Circuit Court, MAHS is the proper forum of the instant appeal.

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The CMH witness testified that Appellant's parents applied for the Family Support Subsidy for their son, the Appellant. The CMH witness testified that documentation was obtained from Appellant's school and that the documentation indicated that Appellant's primary classification by the school was Otherwise Health Impaired, a category ineligible for the Family Support Subsidy. As such, the CMH was required to deny the application. The CMH witness did indicate that the school agreed that Appellant was also autistic, but that the school confirmed that autism was not Appellant's primary classification.

The Appellant's representative testified that Appellant has been tested by clinicians at the University of Michigan and has received a diagnosis of autism. The Appellant's representative indicated that the school district only observed Appellant for a few hours and their determination is therefore not as reliable as the determination made by the University of Michigan.

The Appellant's father testified that one teacher at the school conducted Appellant's evaluation by herself and that this test result indicated a high autism score. (Exhibit 1). The Appellant's father indicated that if the decision regarding eligibility for the Family Support Subsidy is solely up to the school district, then the application for the program should indicate that.

This Michigan Administrative Hearing System office is bound to follow the state law and policy. The state law applicable to this case is clear and there are no exceptions. Family Support Subsidy eligibility requires that the school district provide a primary classification of autistic impaired, severely mentally impaired, or severely multiply impaired. Here, Appellant's classification by the school district is Otherwise Health Impaired, an ineligible classification under the Family Support Subsidy. As such, it was proper for the CMH to deny the Appellant's Family Support Subsidy application.

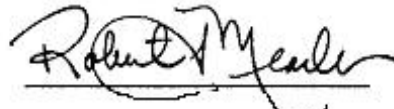
DECISION AND ORDER

The Michigan Administrative Hearing System is the proper forum for appeals of denials or terminations from a Family Support Subsidy, according to MCL 330.1159(c).

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that it was proper for the Appellant's Family Support Subsidy to be denied because Appellant's primary classification by the school district is Otherwise Health Impaired, an ineligible classification under the Family Support Subsidy.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/24/2012

***** 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.



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