

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

**Docket No.** 2012-59878 CMH  
**Case No.** ██████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.* and upon the Appellant's request for a hearing.

After due notice, a hearing held on ██████████. Following some discussion and testimony, it was agreed by the parties and this Administrative Law Judge that the hearing should be continued at a later date so that Respondent could review Appellant's representative's claim that Appellant has been receiving services through Michigan's Habilitation/Supports Waiver (HSW) and so the parties and this Administrative Law Judge would have the opportunity to review proposed exhibits.

The hearing was continued on ██████████. Appellant's mother, ██████████, appeared and testified on Appellant's behalf. ██████████, Assistant Corporation Counsel, represented the Macomb County Community Mental Health Authority (CMH). ██████████, CMH Access Center Manager, appeared as a witness for the CMH.

**ISSUE**

Did the CMH properly deny Appellant's requests for a speech, hearing and language therapy and occupational therapy?

**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 ██████████ who has been diagnosed with Autistic Disorder and moderate mental retardation. (Exhibit 1, pages 15, 30, 37).
2. 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.

3. Appellant has been receiving Medicaid covered services through the CMH since ██████████. Between ██████████ and ██████████ those services included both occupational therapy (OT) and speech, hearing and language therapy. (Testimony of Appellant's Mother; Testimony of ██████████)
4. OT and speech, hearing and language therapy were again requested for the time period of ██████████ to ██████████ (Testimony of Appellant's Mother; Testimony of ██████████)
5. On ██████████ the CMH sent a notice to Appellant notifying him that his request for services had been denied. The stated reason for each denial was that "[r]equested therapies authorized since ██████████ have not resulted in an elimination of the stated problem within a reasonable amount of time. Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age appropriate tasks is not covered." (Exhibit 1, page 15).
6. The Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant on ██████████ (Exhibit 1, page 20).

## **CONCLUSIONS OF LAW**

As described above, Appellant's requests for Appellant's requests for a speech, hearing and language therapy and occupational therapy were denied. Each of those requested services will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the CMH properly denied Appellant's request for speech, hearing and language therapy, but erred in denying Appellant's request for occupational therapy.

### **Occupational Therapy**

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Chapter, articulates the relevant policy in this case and, with respect to OT, it provides:

#### **3.18 OCCUPATIONAL THERAPY**

##### **Evaluation**

Physician-prescribed activities provided by an occupational therapist licensed by the State of Michigan to determine the beneficiary's need for services and to recommend a course of treatment. An occupational therapy assistant may not complete evaluations.

## **Therapy**

**It is anticipated that therapy will result in a functional improvement that is significant to the beneficiary's ability to perform daily living tasks appropriate to his chronological developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.**

Therapy must be skilled (requiring the skills, knowledge, and education of a licensed occupational therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services must be prescribed by a physician and may be provided on an individual or group basis by an occupational therapist or occupational therapy assistant, licensed by the State of Michigan or by an occupational therapy aide who has received on-the-job training. The occupational therapist must supervise and monitor the assistant's performance with continuous assessment of the beneficiary's progress, but on-site supervision of an assistant is not required. An aide performing an occupational therapy service must be directly supervised by a qualified occupational therapist who is on site. All documentation by an occupational therapy assistant or aide must be reviewed and signed by the appropriately credentialed supervising occupational therapist. [MPM, Mental Health/Substance Abuse Chapter, April 1, 2012 version, pages 19-20 (emphasis added).]

Here, the CMH found that Appellant's request for OT should be denied because previous authorizations of such services have not resulted in an elimination of the stated problem within a reasonable amount of time. Appellant's mother, on the other hand, argues that Appellant has made significant improvements and that the therapy continues to be needed.

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred. For the reasons discussed below, this Administrative Law Judge finds that Appellant has met that burden and the CMH's decision with respect to OT must be reversed.

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The CMH asserts that Appellant has essentially been working toward the same goals and objectives since Appellant started receiving OT in ██████████ and that there has only been limited improvement. However, while it appears undisputed that Appellant has been receiving OT since October of the year ██████████, the earliest documentation found in the record regarding such therapy is a report dated ██████████. Other reports, evaluations and plans also record Appellant's OT between that date and ██████████.

From those records, it is clear that Appellant has continually made progress toward his general goals and specific objectives. His goals and objectives have also been repeatedly modified or discontinued as he achieves them. New goals and objectives have been added at various times. Moreover, the record also makes clear that, in deciding to deny Appellant's request for OT, the CMH misidentified the start date of many of Appellant's goals/objectives and ignored the clear progress he has made.

At various times, Appellant has had six goals with respect to his OT. Looking at the records related to his progress toward those goals, it is clear that the CMH erred in finding that he has not made sufficient progress.

For example, with respect to Appellant's goal to improve his use of assistive technology, the CMH appears to assert that he has had the same objectives since July of 2010 and has failed to meet them by ██████████. However, the ██████████ person centered plan (PCP) does not identify improving the use of assistive technology as a goal. Nor does it state any specific objectives in that area. Instead, the goal and its accompanying objective were first added in the ██████████ Progress Report, in which it is specifically identified as a new goal and objective. Appellant did not achieve his new goal and objective by ██████████ which is the most recent report in the record, but he only just started working toward that goal. The CMH erred in describing how long that goal has been in place and there has been no failure to meet it over multiple years as it claims.

As with the goal of improving Appellant's use of assistive technology, the CMH incorrectly identifies the time Appellant started working toward the goal of improving his safety awareness. Rather than the ██████████ date identified by the CMH, improving safety awareness was first added as a new goal in the ██████████ Quarterly Report. At that time, Appellant's new goal had two specific objectives: (1) to be able to recognize and produce his address and phone number with 50% accuracy; and (2) to be able to demonstrate proper phone usage in an emergency situation with 50% accuracy. Appellant achieved the second objective by ██████████ and a new objective took its place. That new objective was then achieved by ██████████. Appellant's first objective was modified on ██████████ after Appellant partially achieved it, and the modified objective was achieved by ██████████. Overall, Appellant has met his past objectives with respect to improving his safety awareness and was working toward new ones when his services were ended.

Regarding Appellant's goal of improving his activities of daily living, the CMH again misidentifies the date Appellant started working toward that goal as ██████████ rather

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the date it was actually first identified as a goal, [REDACTED]. At the time the new goal was identified, it was accompanied by three objectives. Despite some improvement, Appellant never achieved those objectives. However, those objectives were replaced by three new objectives in the [REDACTED] Speech Evaluation. Appellant had therefore just started working toward them when his services were ended.

Similarly, the CMH's reliance on Appellant's alleged lack of improvement with respect to his goal of increasing his attention span is also misplaced. The CMH's hearing summary and argument implies that the goal of increasing Appellant's attention span and its accompanying objective have been in place since the [REDACTED] PCP and have never been met. However, the PCP does not contain that specific goal or objective, and the goal and objective were first identified in the [REDACTED] Speech Evaluation. The objective accompanying that goal was that, by three months, Appellant would participate in a given activity for thirty minutes with only five verbal prompts for redirection. That goal and objective were achieved by [REDACTED]. Therefore, while meeting the goal may have taken longer than anticipated, Appellant's increased attention span and achievement of all objectives in that area demonstrates his improvement.

Since at least [REDACTED] the earliest report regarding OT in the record, Appellant had the goal of improving his fine motor coordination. At that time, there were three specific objectives related to that goal, the second of which had just been achieved and modified. Appellant achieved another objective by [REDACTED] and it was also modified. Similarly, Appellant's second objective was achieved and modified again by [REDACTED]. By [REDACTED], Appellant's first objective had also been achieved and modified, and a fourth objective was added.

On [REDACTED] the goal of improving fine motor coordination was discontinued and the goal of improving Appellant's gross and fine motor skills took its place. At that time, five specific objectives were identified and Appellant was supposed to meet them all in three months. The first objective was achieved and modified by [REDACTED]. Since then, Appellant has made progress toward the modified objective, but has not achieved it. The second objective was achieved by [REDACTED]. The third objective was achieved and modified by [REDACTED]. Appellant has made some progress toward that modified objective, but has not achieved it. The fourth objective was discontinued by [REDACTED] as it involved coloring within lines, which was no longer age-appropriate or motivating. The fifth objective was also achieved [REDACTED]. Overall, while slower than anticipated, Appellant has been meeting his objectives and demonstrating significant progress with respect to his goal of improving his gross and fine motor skills.

The goal of improving Appellant's sensory processing and self-regulation has also been present since at least [REDACTED]. At that time, there were three specific objectives related to that goal, one of which had just been achieved. Over the next three years, the remaining two objectives were achieved and modified several times.

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In the [REDACTED] Quarterly Report, the two remaining objectives were replaced by three new objectives. The three new objectives involved Appellant's vestibular input, tactile input and auditory input respectively. With respect to the vestibular input objective, the objective was achieved and modified by [REDACTED] and then again by [REDACTED]. The objective was modified again on [REDACTED] and Appellant is still working toward it. With respect to the tactile input objective, the objective was discontinued on [REDACTED] in order to focus on other goals and objectives. With respect to the auditory input objective, the objective was achieved by [REDACTED]. Another objective was added on [REDACTED] and achieved by [REDACTED].

Overall, therefore, Appellant has had six goals with respect to OT at various times. However, the CMH appears to have repeatedly misidentified the start date of many of Appellant's goals, with several of them only recently being added. Moreover, it also appeared to ignore that one goal has been completely achieved. With respect to the specific objectives accompanying the goals, the CMH also appeared to ignore the clear progress Appellant has made and how his objectives have also been repeatedly modified or discontinued as he achieves them. The CMH asserts that Appellant has essentially been working toward the same goals and objectives since Appellant started receiving OT in [REDACTED] and that there has only been limited improvement. As demonstrated by Appellant, that assertion is wrong. Appellant has met his burden of proof with respect to the denial of OT and the CMH's decision with respect to that therapy is reversed.

### **Speech, Hearing and Language Therapy**

With respect to speech, hearing and language therapy, the MPM provides:

#### **3.22 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, licensed 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 Section, April 1, 2012, pages 21-22 (emphasis added).]

Here, the CMH found that Appellant's request for speech, hearing and language therapy should be denied because previous authorizations of such services have not resulted in an elimination of the stated problem within a reasonable amount of time. Appellant's mother, on the other hand, argues that Appellant has made significant improvements and that the therapy continues to be needed.

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred. For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet that burden and the CMH's decision with respect to speech, hearing and language therapy must be sustained.

While it appears undisputed that Appellant has been receiving speech, hearing and language therapy since [REDACTED] the earliest documentation found in the record regarding such therapy is the [REDACTED] Speech and Language Quarterly from Developing Connections provided by Appellant's mother. At that time, Appellant had three goals: to improve his expressive language skills; to improve his receptive language skills; and to increase his pragmatic language skills. Each goal was accompanied by two specific objectives that Appellant was working toward. Those

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same three goals and six objectives were also identified in Appellant's Speech Evaluation. (Exhibit 1, page 133).

Despite continually receiving speech, hearing and language therapy since that time, Appellant has not achieved any of his three goals or six objectives. The record contains speech reports and evaluations dated [REDACTED] [REDACTED] [REDACTED] and [REDACTED] and Appellant is working toward the same goals and objectives in each report. Moreover, while there are some notes regarding Appellant's limited progress, the summaries and recommendations of the above reports and evaluations focus on the significant problems Appellant still has.

Given Appellant's clear lack of improvement between [REDACTED] and [REDACTED] despite receiving speech, hearing and language therapy the entire time, the CMH's decision must be affirmed. The therapy must be anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. Based on Appellant's history, that is not the case here and Appellant has failed to meet his burden of proof with respect to the CMH's denial of speech, hearing and language therapy.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's request for speech, hearing and language therapy, but erred in denying Appellant's request for occupational therapy.

**IT IS THEREFORE ORDERED** that:

The CMH's decision is **AFFIRMED IN PART** and **REVERSED IN PART**. The CMH must authorize occupational therapy.

*Steven Kibit*

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

cc:

[REDACTED]

Date Mailed: 9/26/2012

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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.