

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

██████████

Docket No. 2012-60141 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 ██████████ ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████ Program Director at Consumer Services, also 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 request for a speech and language therapy evaluation, an occupational therapy evaluation, 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 ██████ year-old ██████ who has been diagnosed with Autistic Disorder and "Asperger's [sic], Pervasive development NOS, or ██████ disorder." (Exhibit 1, pages 15, 32).
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 ██████████. At one point, those services included both occupational therapy (OT) and speech and language therapy (SLT). (Testimony of Appellant's Mother; Testimony of ██████████).

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4. Appellant received OT and SLT between [REDACTED] and [REDACTED] (Testimony of Appellant's Mother; Testimony of [REDACTED]).
5. A progress report dated [REDACTED] noted Appellant's improved skills and abilities with respect to OT. It is recommended that Appellant "take a break from [OT] to determine if his skills continue or improve without direct treatment. A re-evaluation can be scheduled in the fall if [Appellant's] anxiety increases and/or his attention span or other necessary skills decrease." (Exhibit 1, pages 93-95).
6. Appellant's SLT also stopped in [REDACTED] but the record is silent as to why. (Testimony of Appellant's Mother; Testimony of [REDACTED]).
7. Appellant's mother did not wait until to the fall to schedule an evaluation and, instead, requested an OT evaluation and a SLT evaluation in July of 2011. (Testimony of Appellant's Mother; Testimony of [REDACTED]).
8. The requests were initially denied, but Appellant's mother pursued the matter through a local appeal and the evaluations [REDACTED] were authorized. (Testimony of Appellant's Mother; Testimony of [REDACTED]).
9. The OT evaluation took place on [REDACTED]. The evaluator found that, while Appellant had problems in most areas, there were only two areas of definite dysfunction. (Exhibit 1, pages 96-99).
10. The SLT evaluation took place on [REDACTED] and the evaluator found that Appellant continued to need therapy. (Exhibit 1, pages 100-105).
11. Despite those evaluations, no OT or SLT was granted at that time. However, no appeal was filed with respect to any denial of services either. (Testimony of Appellant's Mother; Testimony of [REDACTED]).
12. Appellant has been and is receiving both OT and SLT through his school during the relevant time period. (Exhibit 1, pages 69-92).
13. Appellant's most recent person centered plan (PCP) notes that he receives OT and SLT in his school. It also lists a number of occupational and speech objectives. (Exhibit 1, pages 43-52).
14. Following the development of that PCP, Appellant's supports coordinator requested evaluations for OT and SLT on Appellant's behalf. Appellant also requested OT. (Testimony of [REDACTED]).
15. On [REDACTED], the CMH sent a notice to Appellant notifying him that his requests for a SLT evaluation, an OT evaluation and OT had been denied. The stated reasons for the denials were that the requested services were "Not medically necessary". (Exhibit 1, page 9).

16. The Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant on ██████████ (Exhibit 1, page 13).

CONCLUSIONS OF LAW

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

* * *

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.]

However, while speech evaluations or services may be authorized pursuant to the MPM, they must still be medically necessary. 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 CFR 440.230.

Moreover, in addition to the requirement that services be medically necessary, the CMH is the payer of last resort and it must coordinate a client's school's services with any services to be provided by the CMH prior to authorizing services:

SECTION 2 – PROGRAM REQUIREMENTS

2.1 MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES

Mental health and developmental disabilities services (state plan, HSW, and additional/B3) must be:

* * *

- Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MI Choice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices) . . . [MPM, Mental Health/Substance Abuse Chapter, April 1, 2012, page 8.]

Here, the CMH found that a SLT evaluation, an OT evaluation and OT services were not medically necessary because Appellant is already receiving SLT and OT services through his school. Appellant's mother, on the other hand, argues that the services offered through the school are insufficient. For the reasons discussed below, this Administrative Law Judge finds that the CMH's decision should be affirmed.

It is undisputed that Appellant is receiving OT and SLT through his school. (Exhibit 1, pages 69- 92). Moreover, based on the language of the Individualized Education Program (IEP) developed by the school, it appears that the school's services were

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intended to meet all of Appellant's needs. For example, there is nothing in that IEP regarding Appellant needing other services. Likewise, there is no mention or attempt to coordinate the school's services with any services to be provided by the CMH, which is required before the CMH could authorize services.

In response, Appellant's mother testified that she is not clear as to why the speech services stopped in the first place and it was always the plan that the OT would be reinstated when necessary. She also testified that the services are necessary given the regression Appellant has displayed since his services were terminated. Appellant's mother further testified that Appellant's school is going through budget cuts and Appellant needs more than what it is providing. (Testimony of Appellant's Mother).

Similarly, ██████████ testified that the services provided by Appellant's school are very limited in both time and types of services. In particular, ██████████ noted that Appellant does not receive his therapies weekly and that, when he does receive them, they are only consultative. ██████████ also testified that the school lacks the right equipment that can help Appellant. (Testimony of ██████████).

Appellant's mother also provided two letters in support of her argument. One is from Appellant's teacher and she describes Appellant as undergoing a dramatic improvement during the times he received OT and SLT both inside and outside of the school. She also stated her belief that such improvement is only possible when Appellant is receiving services through the school and the CMH. (Exhibit 3, pages 1-2). The second is from Appellant's doctor and it also recommends that Appellant receive OT and SLT outside of school due to the severity of Appellant's disability and the improvement he has shown when receiving such therapy. (Exhibit 2, page 1).

Regarding Appellant's teacher's letter, it is worth noting that the letter is dated after the decision was made in this case and this Administrative Law Judge is limited to reviewing the CMH's decision in light of the information available at the time it made its decision. To the extent it is relevant, the information in the teacher's letter should be included in Appellant's IEP, which is not the case here. Instead, the teacher's letter appears to be in conflict with IEP. The school is the primary provider of services and, if it believes additional services are required, it needs to state so.

Regarding Appellant's doctor's letter, this Administrative Law Judge would again note that the letter is dated after the decision was made in this case and this Administrative Law Judge is limited to reviewing the CMH's decision in light of the information available at the time it made its decision. This Administrative Law Judge also finds that the doctor's letter fails to provide much details in support of her opinion and that her medical opinion is not dispositive in this case.

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred in denying the SLT evaluation, the OT evaluation, and the OT. However, given the language of the school's IEP and the lack of coordination of services,

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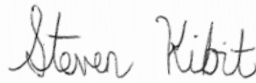
Appellant has failed to meet his burden of proof in this case. Accordingly, the CMH's decision must be affirmed.

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 requests for a speech and language therapy evaluation, an occupational therapy evaluation, and occupational therapy.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.



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

cc:



Date Mailed: 9/26/2012

***** 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.