

**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. 2012-62327 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 Appellant's request for a hearing.

After due notice, a hearing held 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 Supervisor, 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 mild mental retardation. (Exhibit 1, pages 18, 31).
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 ██████████. Those services have included assessments, treatment planning, supports coordination, evaluations, community living supports, behavioral services, respite services, occupational therapy (OT) and speech, hearing and language therapy. (Testimony of ██████████).

4. OT and speech, hearing and language therapy were again requested for the time period of ██████████, to ██████████ (Testimony of ██████████ Exhibit 1, pages 11-12).
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: "Medical necessity for service is not demonstrated beyond what is already provided in school." (Exhibit 1, page 8).
6. The Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant on ██████████. (Exhibit 1, page 14).

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 Speech, Hearing and Language Therapy, 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.]

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Here, the CMH found that OT and Speech, Hearing and Language Therapy were not medically necessary because Appellant is already receiving such services through his school. The CMH also found that no evidence suggests that any services beyond that provided by the school are necessary and that, as the CMH is the payer of last resort, no additional services should be authorized.¹ 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 Speech, Hearing and Language Therapy through his school. Moreover, based on the language of the most recent Individualized Education Program (IEP) developed by the school, it appears that the school's services were intended to meet all of Appellant's needs. (Exhibit 1, pages 69-97). 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. Dunton further testified that the speech or occupational therapy goals can further be addressed by Appellant's CLS workers and in the community, as noted in his person-centered plan.

In response, Appellant's mother testified that the outside services Appellant received in the past are much better than what is in school and that, while Appellant has made progress in the past, Appellant's progress is dependent upon those outside therapies. In particular, she noted that Appellant learns best one-on-one and that his OT therapist has better equipment for OT than school. Appellant's mother further testified that Appellant has regressed since his outside services were stopped. Moreover, Appellant's mother testified that CLS workers are not the equivalent of therapists and they are unable to work on some areas with Appellant.²

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred in denying the Speech, Language and Hearing Therapy or the OT. With respect to that decision, Appellant's mother testified that she cannot understand the denial because everyone who has examined or seen Appellant has agreed that he needs OT and Speech, Hearing and Language Therapy. However, the fact that Appellant needs some services is not in dispute and the real issue is whether Appellant requires services beyond that provided by the school. Here, given the language of the school's IEP and the lack of coordination of services, Appellant has failed to meet his burden of proof in this case. Appellant's mother may have testified extensively regarding her dissatisfaction with the school's service and the need for additional

¹ The CMH's representative and witness also appeared to allude to another reason for the denial of OT, *i.e.* that the functional improvements Appellant had made were not durable or maintainable. However, while Appellant's mother did appear to testify that Appellant has regressed since losing his OT and such regression could be a sign that any improvement was not durable, the notice does not identify lack of durability as a reason for the denial and the CMH's secondary reason will not be considered here.

² Appellant's mother also stated that she had made a documentary that, in part, addressed the loss of services. The documentary was to be admitted as Exhibit 2, but this Administrative Law Judge never received a copy of the documentary as a DVD or as an attachment to an email.

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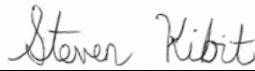
outside services, but that testimony is not reflected elsewhere in the record. Accordingly, the CMH's decision must be affirmed.

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 occupational therapy and speech, hearing and language 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: 10/08/2012

***** 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.