

**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. 2012-67097 CMH
Case No. [REDACTED]

[REDACTED]

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 [REDACTED] [REDACTED] Appellant's mother, appeared and testified on Appellant's behalf. [REDACTED] a service coordinator from the Early On Program, also testified as a witness for Appellant. [REDACTED]

[REDACTED] Assistant Corporation Counsel, represented the Macomb County Community Mental Health Authority (CMH). [REDACTED] CMH Access Center Manager, appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for supports coordination?

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 was born on [REDACTED] and has been diagnosed with ventricular septal defects, arterial septal defects, and developmental coordination disorder. (Exhibit 1, pages 16, 22, 50, 64).
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 Supplemental Security Income from the Social Security Administration and respite services from the Infant Mental Health Program. Appellant has also been receiving services through the Early On Program. (Exhibit 1, page 11; Testimony of [REDACTED]).
4. Appellant did not meet the criteria for special education at his school. (Exhibit 1, page 27).

5. In ██████████ Appellant's mother requested supports coordination from the CMH on Appellant's behalf. (Exhibit 1, page 6).
6. On ██████████ the CMH sent a notice to Appellant notifying him that the request for supports coordination was denied because "the consumer does not meet criteria for the services requested." (Exhibit 1, page 6).
7. The Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant on ██████████ (Exhibit 1, pages 10-12).

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 CFR 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 CFR 430.10.]

Section 1915(b) of the Social Security Act also 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 USC 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.

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy regarding eligibility for mental health services and a beneficiary must meet the eligibility requirements for services. With respect to eligibility, the MPM states:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record. [MPM, Mental Health/Substance Abuse Section, April 1, 2012, page 3.]

Here, Appellant is not eligible for services because he cannot demonstrate that he has a mental illness, serious emotional disturbance or developmental disability. The state of Michigan's Mental Health Code defines those first two conditions in MCL 330.1100d as follows:

(2) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or

limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) "V" codes in the diagnostic and statistical manual of mental disorders.

(3) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) A "V" code in the diagnostic and statistical manual of mental disorders.

Additionally, with respect to developmental disabilities, the Mental Health Code provides:

(21) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

(ii) Is manifested before the individual is 22 years old.

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(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided. [MCL 330.1100a(21).]

In this case, at the time it made the denial, the CMH was limited in the documents it had received. The most relevant records the CMH had came from an ██████████ evaluation conducted by the Macomb Intermediate School District (MISD). With respect to that evaluation, the Occupational Therapist wrote:

██████████ range of motion, and muscle tone was within normal limits. He exhibits a positive Asymmetrical Tonic Reflex (ATNR) to the right and left. His strength and endurance is decreased. ██████████ is on restrictions due to his recent heart surgery and was not placed on his stomach. When on his back elevated in a Boppy pillow, ██████████ was observed to bat at toys suspended above him. He is not yet batting when on his back on the floor, but with support to his upper arm, he did begin to reach while in supine and supported sitting. He is able to visually track in these positions as well, and ██████████ will hold and move a rattle placed in his palm. The fine motor subtests of the Peabody Developmental Motor Scales were administered and ██████████ scored at an age equivalency of 3 months for both his grasping skills and visual motor integration skills.

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██████████ mother describes him as a good eater. His weight gain is being monitored closely. He is nursing and taking bottles as well.

██████████ does not meet the eligibility criteria for Special Education services at this time. He demonstrated a 20% delay in his motor development . . . [Exhibit 1, page 27.]

The Family Intake Coordinator also found:

██████████ was able to hold his head erect but unsteady. He still demonstrated a head lag. His hands appear to be open or loosely fist. He is able to retain a rattle activity. He would hold and look at the rattle. ██████████ was able to bring his free hand to midline. ██████████ was heard to coo and chuckle. He would vocalize a social response. ██████████ appeared to attend to voices. ██████████ demonstrated the ability to suck on his hand or thumb. ██████████ would look at an adult and respond to voices. He would follow a person with his eyes. ██████████ demonstrated a social smile. He expressed discomfort and expressed pleasure. He showed pleasure in social stimulation. He would use comforting when distressed. ██████████ would scan the environment visually or would turn away.

Using BOT and TA developmental hearing checklist, it appears ██████████ is meeting hidden developmental milestones in hearing activity. Using the Infant Toddler Developmental Assessment and Early On Vision Screening checklist, **it appears that ██████████ is competent in all areas of development at this time excluding fine motor skills.** Based on the evaluation done by Cheryl Costeiu, Occupational Therapist, ██████████ does demonstrate 20 percent delay in the area of fine motor skills. It was therefore discussed with ██████████ that ██████████ would be eligible for the services of Early On. [Exhibit 1, page 26 (emphasis added).]

Given the results of that evaluation, Appellant's request must be denied. As noted in the Access Screening of Appellant's request, while Appellant's mother reported developmental delays in fine and gross motor skills, there is not enough information to justify authorizing services. (Exhibit 1, page 23). A 20% delay in the area of fine motor skills does not on its own qualify as a mental illness, serious emotional disturbance or developmental disability. Moreover, there is no additional evidence suggesting that Appellant's condition is a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in substantial functional limitations

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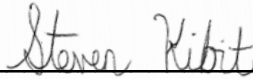
in major life activities if services are not provided. To the extent that new information becomes available, Appellant can always reapply for services.

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 supports coordination.

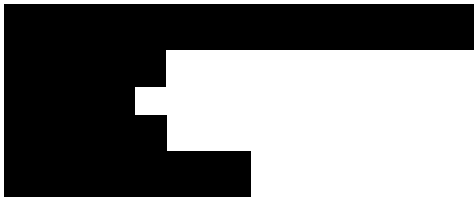
IT IS THEREFORE ORDERED that:

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: 10/25/2012

***** 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.