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) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 2013-11695 QHP
Case No [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.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant was represented by [redacted], mother. [redacted]. was represented by [redacted], Staff Attorney. [redacted] is a Department of Community Health contracted Medicaid Health Plan (MHP). [redacted], Grievance Coordinator, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for speech therapy services?

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 [redacted]year-old Medicaid beneficiary.

2. The MHP approved speech therapy services for the Appellant in [redacted] and part of [redacted] (Grievance Coordinator Testimony)

3. On or about [redacted], the MHP received a request for continuing coverage for speech therapy services for the Appellant. (Exhibit E, pages 24-25)

4. The Appellant's diagnoses include chromosome 15 deletion, speech difficulty and lack of muscle coordination. The Appellant has a history of developmental delay, with delays in both expressive and receptive language. (Exhibit E, pages 24-35)

5. On [redacted], the MHP sent the Appellant, her doctor and the speech therapy provider notice that the request to extend authorization for

speech therapy services was denied because therapy services are for temporary conditions and are considered short-term benefits under the Medicaid subscriber contract. The notice also noted the Michigan Department of Community Health Medicaid Provider Manual policy. This policy says habilitative treatment is not a covered service, meaning teaching someone how to do something for the first time. The Appellant would receive speech therapy for speech delay, to teach her communication skills for the first time. The Michigan Department of Community Health Medicaid Provider Manual policy also says educational speech therapy is expected to be provided by the school system. (Exhibit B, pages 4-15)

6. On [redacted], the Michigan Administrative Hearing System received the Request for Hearing submitted on the Appellant's behalf. (Exhibit A, pages 1-3)

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.

The Respondent is one of those MHPs.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.
>
> *Section 1.022(E)(1), Covered Services.*
> *MDCH contract (Contract) with the Medicaid Health Plans,*
> *October 1, 2009.*

> (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.
- The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Section 1.022(AA), Utilization Management,
MDCH contract (Contract) with the Medicaid Health Plans*,*
October 1, 2009.

As stated in the Department-MHP contract language above, a MHP, "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent sections of the Michigan Medicaid Provider Manual are as follows:

5.3 SPEECH THERAPY

The terms speech therapy, speech-language pathology, speech-language therapy, and therapy are used to mean speech and language rehabilitation services and speech-language therapy.

MDCH covers speech-language therapy provided in the outpatient setting. MDCH only reimburses services for speech-language therapy when provided by:

- A speech-language pathologist (SLP) with a current Certificate of Clinical Competence (CCC).

- An appropriately supervised SLP candidate (i.e., in their clinical fellowship year [CFY]) or having completed all requirements but has not obtained a CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.

- A student completing his clinical affiliation under direct supervision of (i.e., in the presence of) an SLP having a current CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.

MDCH expects that all SLPs will utilize the most ethically appropriate therapy within their scope of practice as defined by Michigan law and/or the appropriate national professional association.

For all beneficiaries of all ages, speech therapy must relate to a medical diagnosis, and is limited to services for:

- Articulation
- Language
- Rhythm
- Swallowing
- Training in the use of an speech-generating device
- Training in the use of an oral-pharyngeal prosthesis
- Voice

For CSHCS beneficiaries (i.e., those not enrolled in Medicaid; only enrolled with CSHCS), therapy must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing the care of the beneficiary.

Therapy must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess

the beneficiary for deficits, develop a treatment program and provide therapy). Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family member, or caregiver) would not be reimbursed as speech therapy by MDCH.

For beneficiaries of all ages, therapy is **not** covered:

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.
- If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.
- If it is designed to facilitate the normal progression of development without compensatory techniques or processes.
- If continuation is maintenance in nature.
- If provided to meet developmental milestones.
- If Medicare does not consider the service medically necessary.

5.3.A. DUPLICATION OF SERVICES

Some areas (e.g., dysphagia, assistive technology) may appropriately be addressed by more than one discipline (e.g., OT, PT, speech therapy) in more than one setting. MDCH does not cover duplication of services, i.e., where two disciplines are working on similar areas/goals. It is the treating therapist's responsibility to communicate with other practitioners, coordinate services, and document this in his reports.

5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES

School-aged beneficiaries may be eligible to receive speech-language therapy through multiple sources. Educational

> speech is expected to be provided by the school system and is not covered by MDCH or CSHCS. Examples of educational speech include enhancing vocabulary, improving sentence structure, improving reading, increasing attention span, and identifying colors and numbers. Only medically necessary therapy may be provided in the outpatient setting. Coordination between all speech therapy providers should be continuous to ensure a smooth transition between sources.
>
> Outpatient therapy provided to school-aged children during the summer months in order to maintain the therapy services provided in the school are considered a continuation of therapy services when there is no change in beneficiary diagnosis or function. Prior authorization is required before initiating a continuation of therapy.
>
> If a school-aged beneficiary receives medically necessary therapy services in both a school setting (as part of an Individualized Education Plan [IEP]) and in an outpatient setting, coordination of therapy between the providers is required. Providers are to maintain documentation of coordination in the beneficiary's file. **(text added per bulletin MSA 12-02)**
>
> *Department of Community Health,*
> *Medicaid Provider Manual, Outpatient Therapy Section*
> *Version Date: October 1, 2012, Pages 19-21.*

The Grievance Coordinator testified the previous authorization of speech therapy services in [redacted] and part of [redacted] was in error. Under the Medicaid subscriber contract, the Appellant has a short term rehabilitation benefit. Rehabilitation means restoring a skill level back to the original state prior to the injury or illness. In order to be considered a rehabilitation benefit or medically necessary, the therapy must relate to an injury or illness. The information provided does not show that the Appellant has an injury or illness relating to the speech therapy. The Grievance Coordinator further explained the Medicaid does not allow for coverage of speech therapy services that are habilitative (i.e. learning a skill for the first time), required to be provided by the school, or due to developmental delay. (Grievance Coordinator Testimony)

The Appellant's mother disagrees with the denial testified that the Appellant's speech therapy is caused by the chromosome 15 deletion. The school was unable to start speech therapy services until [redacted], and it is only group therapy. The Appellant needs to continue the individual therapy services she has been receiving. (Mother Testimony)

The Appellant is [redacted] years old and her diagnoses include chromosome 15 deletion, speech difficulty and lack of muscle coordination. The Appellant has a history of developmental delay, with delays in both expressive and receptive language. (Exhibit E, pages 24-35) This ALJ does not doubt that the Appellant has made progress with the previously authorized speech therapy services and would continue to benefit from them. However, under the contract provisions, the MHP is only required to provide services consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations. While this ALJ sympathizes with the Appellant's circumstances, Medicaid policy clearly states that speech therapy that is habilitative, developmental, or required to be provided by another public agency is not covered. Based upon available evidence, the requested therapy services are habilitative and developmental. It further appears that the Appellant is receiving some speech therapy services through the school district. Accordingly, the MHP denial was consistent with the Medicaid policy and must be upheld.

As noted during the telephone hearing proceedings, the Appellant also has appeal rights regarding services provided though the school district, which the Appellant's mother may wish to pursue.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that that the MHP properly denied the Appellant's request for speech therapy services.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

\s\
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 2/11/2013

***** 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.