

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:

██████████,

Appellant

_____ /

Docket No. 2013-21310 CMH
Case No. ██████████

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 was held on ██████████. ██████████, an advocate from the ██████████, Inc., appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's mother, also appeared as witnesses for Appellant. ██████████, Fair Hearings Officer, appeared on behalf of the ██████████ Community Mental Health Authority (CMH). ██████████, Corporate Risk Management Specialist, also appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for 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 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.
2. Appellant is a ██████ year-old female who has been diagnosed with Rapid-onset Obesity with Hypothalamic dysfunction, Hypoventilation and Autonomic Dysregulation (ROHHAD syndrome). (Respondent's Exhibit B, page 1).
3. In ██████, Appellant applied for mental health services through the CMH and underwent a clinical screening. (Respondent's Exhibit B, pages 1-2).

Docket No. 2013-21310 CMH
Decision and Order

4. On [REDACTED], Respondent sent Appellant written notice that her request for services was being denied. As stated in that notice:

The services for which you have *applied* were denied because Kelsey has been screened by this clinician and at the time of the screening that only AX I diagnoses which could be applied was generalized as anxiety disorder, the possibility of short term outpatient treatment for anxiety has been discussed, but you didn't see the necessity of this kind of treatment. As you and your mother insisted that this clinician get in-depth knowledge about Kelsey's rare genetic disorder the final decision about eligibility was delayed. After getting familiar with existing literature about disorder this clinician recommended IQ testing for two reasons first the cognitive impairment could be part of genetic syndrome and second some historical information, for example the fact that the Kelsey was not able to pass her tests in college, makes this clinician think that IQ test might be in low range. As this testing has not been done and Kelsey does not have eligible diagnoses on Ax I and Ax II therefore she is not eligible for services within the DD Department. [Respondent's Exhibit A, page 1.]

5. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant.
6. On [REDACTED], MAHS sent out notice of a telephone hearing scheduled for [REDACTED].
7. However, on the next day, MAHS sent out an amended notice of a telephone hearing and changed the date of the hearing to [REDACTED].
8. On [REDACTED], Appellant's representative requested an in-person hearing.
9. On [REDACTED], MAHS sent out notice of an in-person hearing scheduled for [REDACTED].
10. On [REDACTED], Respondent's representative requested an adjournment of either this hearing or another in-person hearing scheduled for the same date and time due to an inability to attend both in-person

██████████
Docket No. 2013-21310 CMH
Decision and Order

hearings.

11. On ██████████, MAHS sent out notice of the rescheduled in-person hearing and the new hearing date of ██████████.
12. The in-person hearing was held on ██████████.

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.]

Moreover, Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this

Docket No. 2013-21310 CMH
Decision and Order

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, October 1, 2012, page 3.]

The state of Michigan's Mental Health Code, MCL 330.1100d, defines those first two conditions 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.

Docket No. 2013-21310 CMH
Decision and Order

- 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, (MCL 330.1100a(21)), 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.
 - iii. Is likely to continue indefinitely.

Docket No. 2013-21310 CMH
Decision and Order

- 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.

In this case, Appellant's representative argues that Appellant meets all of the criteria for having a developmental disability and is therefore eligible for services through the CMH.

While not entirely clear, the notice of denial does appear to state that Appellant does not have a developmental disability. Specifically, the denial provides that: "As [IQ] testing has not been done and [REDACTED] does not have eligible diagnoses on Ax I and Ax II therefore she is not eligible for services within DD Department." (Respondent's Exhibit A, page 1).

However, given that stated basis for denial, it is clear that the denial was improper. The definition and criteria for developmental disability provided in the Mental Health Code does not require that an applicant have any specific diagnosis on diagnostic axes or even any specific cognitive impairment.

Respondent's representative and witness concede that the reasons given in the notice were improper and a mistake. According to them, the worker assessing Appellant's case used an out-dated and inappropriate tool.

Respondent does argue that, while the actual notice of denial is improper, it has reviewed Appellant's extensive file and found that Appellant does not meet the criteria for a developmental disability as defined by the Mental Health Code because she does not have substantial functional limitations in 3 or more areas of major life activity.

Docket No. 2013-21310 CMH
Decision and Order

Respondent also argues that Appellant is too old to receive services for a developmental disability.

However, this Administrative Law Judge is limited to reviewing the negative action being appealed. Here, it is undisputed that the reasons given for the negative action in this case were improper and that Appellant's functional limitations and age played no role in the denial. Appellant was only notified of the improper reasons for the denial. Moreover, any subsequent review is immaterial and no evidence regarding such a review is part of the record. Accordingly, the CMH's decision must be reversed as it applied the wrong criteria to Appellant's application.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The CMH decision is **REVERSED**. Respondent must reevaluate Appellant's application/documentation and issue a new decision regarding eligibility.

Steven Kibit

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

Date Signed: May 16, 2013

Date Mailed: May 16, 2013

cc:

[Redacted]

Docket No. 2013-21310 CMH
Decision and Order

***** 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.