

**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. 2013-26864 PA

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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant was represented by ██████████, mother. ██████████, grandmother and student advocate, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Consultant Reviewer, appeared as a witness for the Department. The hearing record was left open for both parties to submit additional information. No additional information was received from the Appellant. On ██████████, additional documentation was received from the Department.

ISSUE

Did the Department properly deny the Appellant's ██████████ request for a continuation of 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 ██████ year-old Medicaid beneficiary.
2. On or about ██████████, the Department received a request for speech therapy services for the Appellant from the Detroit Institute for Children. (Consultant Reviewer Testimony)
3. On ██████████, the Department sent a request for additional information to the Detroit Institute for Children. This letter included a lengthy bullet listing of what additional information was needed and noted that re-submissions are considered new requests. (Exhibit 1, pages 4-5)

4. On ██████████, the Department received a request for speech therapy services for the Appellant from ██████████ Hospital. (Exhibit 3, pages 2-8)
5. On ██████████, the Department received the resubmitted request for speech therapy services for the Appellant from the Detroit Institute for Children with a response to the request for additional information. (Exhibit 1, pages 1-6)
6. On ██████████, the Department sent the Appellant notice that the ██████████ request for outpatient speech therapy services from the ██████████ for Children was denied because the goals are educational in nature and no significant progress has been made. (Exhibit 1, pages 9-10)
7. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing submitted on the Appellant's behalf. (Exhibit 1, pages 21-25)

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 Department policy regarding outpatient speech therapy can be found in the Outpatient Therapy section of the Medicaid Provider Manual:

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 a 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.

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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 request for hearing in this case was filed contesting the ██████████, denial of the ██████████ request for outpatient speech therapy services from the ██████████ ██████████ for Children. (Exhibit 1, pages 21-25) The evidence establishes that this was a re-submitted prior authorization request. The Department first received a prior authorization request for outpatient speech therapy services for the Appellant from the ██████████ for Children on ██████████. (Consultant Reviewer Testimony) On ██████████ the Department sent a request for additional information to the ██████████ for Children. (Exhibit 1, page 4-5)

The record was left open following the ██████████ telephone hearing proceedings. The Appellant's mother had faxed 36 pages to this ALJ's office the day prior to the hearing, which the Department's representative did not receive until the morning of the hearing. The Department was given time to respond to the documentation submitted by the Appellant's mother. The Appellant's mother also indicated she would be sending more documentation after the ██████████ telephone hearing proceedings. This ALJ also requested the Department submit a copy of the ██████████, prior authorization request that led to the ██████████ request for additional information with their response to the documentation submitted by the Appellant's mother. No further documentation was received from the Appellant's mother. Further, the Department did not submit a copy of the ██████████ prior authorization request with their response. It appears that the duplicate request from the other speech therapy provider, ██████████ Hospital, was submitted instead. (Exhibit 3, pages 2-8)

On ██████████, the Department sent the Appellant notice that the ██████████ ██████████ request for outpatient speech therapy services from the ██████████ for

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Children was denied because the goals were educational in nature and no significant progress had been made. (Exhibit 1, pages 9-10) The Consultant Reviewer explained that the requested speech therapy services were denied because the goals were not in accordance with the published policy. The listed goals were educational in nature and did not have compensatory techniques and strategies to them. Goals like greetings are not medical unless a reason is provided. For example if there has been a head injury and someone is relearning. Further, the information received did not indicate significant progress had been made. (Consultant Review Testimony; Exhibit 1, pages 1-3) The Consultant Reviewer noted that a prior request from this provider had been returned for additional information. (Exhibit 1, pages 4-5) Not all of the requested information was provided, such as the current IEP and what makes the goals skilled and medical rather than educational. The Consultant Reviewer stated she found the response sent with the re-submission was rather subjective and she can not make a subjective decision. (Consultant Review Testimony; Exhibit 1, page 6) The Consultant reviewer went over several of the circumstances in which speech therapy is not covered under the above cited policy as well as the policy addressing the evaluation, treatment plan and continued active treatment for speech therapy. (Consultant Reviewer Testimony; Exhibit 1, pages 12-16)

The Appellant's mother disagrees with the denial but acknowledged that there are issues with the way the prior authorization request was filled out by the [REDACTED] for Children. This was a provider closer to home, but after a few weeks it was decided the Appellant should return [REDACTED] Hospital for speech therapy services. The Appellant's mother indicated that complete IEPs were sent to the Department on three occasions since the Appellant started receiving services in [REDACTED]. However, the Appellant's mother also acknowledged that the IEP this year might have been missed and noted that extensive testing was also done by the school in [REDACTED]. (Mother Testimony)

The Appellant's mother testified that the Appellant is making progress, but he is significantly impaired and needs a lot of services. At age [REDACTED] the Appellant is not suitable for [REDACTED]. The Appellant is in a half day program, four days per week. The documentation the Appellant's mother has indicates the Appellant needs a minimum of one hour of one on one therapy per week, and the best the school can provide is group therapy 90-120 minutes per week. The Appellant's mother stated there were additional diagnoses the Department did not have to consider with this request, but they had been provided to the Department over the past almost three years. The Appellant's mother asserted that the Appellant has made significant progress as documented in the evidence she provided. (Exhibit 2) However, this is not age appropriate progress and the goals are not age appropriate goals. The more time the Appellant spends not being able to communicate wants, needs, and desires, the worse his behavior is. The Appellant has a new diagnosis of emotional disturbance, he is receiving behavioral therapy and he has a cognitive impairment. In looking at the policy, the Appellant's mother sees things that would not be covered, but noted that services would be covered for severe expressive and receptive delay, articulation, and language. (Mother Testimony)

The above cited Medicaid policy states that speech therapy is not covered in several circumstances, including: if services are required to be provided by another public agency; when intended to improve communication skills beyond pre-morbid levels; for educational, vocational, social/emotional, or recreational purposes; if it is habilitative; designed to facilitate the normal progression of development without compensatory techniques or processes; or to meet developmental milestones. Despite the ██████████ ██████████ Request for Additional information, which was very detailed about the policy and what information was still needed, not all of the requested information was provided. (Exhibit 1, pages 4-5) The Appellant's mother's testimony indicates there was dissatisfaction with the services from this speech therapy provider, which are also consistent with the issues seen in providing the requested information to the Department for this prior authorization request. While this ALJ sympathizes with the Appellant's circumstances, the information provided for the ██████████ prior authorization request does not support coverage of the requested speech therapy services. The Department's denial of this prior authorization request was consistent with the Medicaid policy and must be upheld.

If he has not already done so, the Appellant may wish to have a new prior authorization request and supporting documentation submitted from the provider he wishes to have ongoing speech therapy services with.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: ██████████
██████████
██████████

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Date Mailed: 4/23/2013

***** 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.