

**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

Docket No. 2013-31896 CMH
Case No. [REDACTED]

[REDACTED]
Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], Advocate, appeared on behalf of Appellant. Appellant's witnesses were [REDACTED], Appellant's mother; [REDACTED], Appellant's sister; and [REDACTED], Appellant's tutor.

[REDACTED], Fair Hearings Officer, represented [REDACTED], the mental health authority for Michigan (CMH or [REDACTED]). [REDACTED], Contract Manager and [REDACTED], Supports Coordinator, appeared as witnesses for the Department.

ISSUE

Did CMH properly determine that Appellant was not eligible for CMH services as a person with a developmental disability (DD)?

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 [REDACTED] year-old Medicaid beneficiary, born [REDACTED]. (Exhibit F, p 1)
2. 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. (Testimony)
3. Appellant is diagnosed with mood disorder, mild mental impairment, ADHD, anxiety disorder, obesity, asthma, obstructive sleep apnea and hypothyroid. (Exhibit F, pp 12, 14)

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4. Appellant is being prescribed the medications Advair, Ferrous Sulfate, Levothyroxine, Prevacid, Metformin, Adderall XR, Celexa, and Abilify. (Exhibit F, p. 7)
5. Appellant lives with his mother and sister. (Exhibit F, p 1; Testimony)
6. Appellant is currently enrolled in school at [REDACTED] (KEC) [REDACTED]. (Exhibit F, p 1)
7. Appellant has been receiving services through various agencies since at least [REDACTED] (Exhibit F, p 1).
8. Since Appellant's last full assessment in [REDACTED], Appellant has been receiving the following services: supports coordination, psychiatric services, respite services, and outpatient counseling. (Exhibit F, p 13)
9. [REDACTED] Contract Manager for the Children and Family Division discovered that due to an inconsistency in the [REDACTED] Service Specifications, it had become the practice of [REDACTED] providers, when determining whether a child had a developmental disability, to require substantial functional limitations in only 2 major life areas instead of 3 major life areas as indicated in the Michigan Mental Health Code (MMHC) and the contract between [REDACTED] and the Michigan Department of Community Health (MDCH). (Testimony)
10. During the preplanning process for Appellant's [REDACTED] assessment, Appellant's supports coordinator reviewed Appellant's diagnoses and eligibility for continued services and found that Appellant had substantial functional limitations in only 2 major life areas: learning and self-direction. (Testimony)
11. On [REDACTED], Appellant's supports coordinator completed an Eligibility Profile for Appellant with his mother, which showed that Appellant had substantial functional limitations in only 2 major life areas: learning and self-direction. (Exhibit G)
12. On [REDACTED], [REDACTED] sent Appellant an Advance Notice of Action informing him that services were terminated because an assessment had shown that Appellant was not a person with a developmental disability, as defined by the Mental Health Code. The Advance Notice of Action informed Appellant of his right to a Medicaid Fair Hearing. (Exhibit C).
13. On [REDACTED], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1)

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 provides:

The Secretary, to the extent she 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...

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

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of Community Health (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. Detroit-Wayne County CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible.

The CMH Representative indicated that the Michigan Mental Health Code definition of developmental disability was utilized by CMH to determine that Appellant was not eligible for CMH services. That definition provides, in pertinent part:

(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.

(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.

MCL 330.1100a

██████████ Contract Manager testified that in ██████████ she discovered that due to an inconsistency in the ██████████ Service Specifications, it had become the practice of ██████████ providers, when determining whether a child had a developmental disability, to require substantial functional limitations in only 2 major life areas instead of 3 major life areas as indicated in the Michigan Mental Health Code and the contract between ██████████ and the Michigan Department of Community Health. ██████████ Contract Manager testified that

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once this discrepancy was discovered, [REDACTED] updated its Service Specification and notified all of its providers of the update. [REDACTED] Contract Manager indicated that the Service Specifications describe services in detail and include what the eligibility requirements for those services are. [REDACTED] Contract Manager indicated that [REDACTED] is required to follow its Service Specifications per its contract with the MDCH.

Appellant's supports coordinator testified that during the preplanning process for Appellant's [REDACTED] assessment, she reviewed Appellant's diagnoses and eligibility for continued services and found that Appellant had substantial functional limitations in only 2 major life areas: learning and self-direction. On [REDACTED], Appellant's supports coordinator also completed an Eligibility Profile for Appellant, which showed that he had substantial functional limitations in only 2 major life areas: learning and self-direction. Appellant's supports coordinator testified that because Appellant is a minor, the last two criteria in the MMHC definition of developmental disability (capacity for independent living and economic self-sufficiency) are not applicable to Appellant. Appellant's supports coordinator indicated that she has had numerous meetings with Appellant's family since the decision to terminate his services was made and that she has made numerous recommendations for other services that would be more appropriate for Appellant. Appellant's supports coordinator testified that there is no question that Appellant continues to need services.

Appellant's advocate testified she believes Appellant does have a substantial functional limitation in the area of receptive and expressive language. Appellant's advocate indicated that in two years Appellant will no longer be a minor, the last two criteria in the MMHC definition of developmental disability (capacity for independent living and economic self-sufficiency) will be applicable, and Appellant will again be eligible for services as a person with a developmental disability. Appellant's advocate testified that Appellant and his family still have extensive needs and that changing service providers now will have negative effects.

Appellant's tutor agreed that Appellant has a substantial functional limitation in the area of receptive and expressive language because Appellant has no abstracting ability. Appellant's tutor indicated that Appellant is fine with simple conversation, but anything beyond that causes him difficulty, as does any stress or anxiety. Appellant's tutor indicated that Appellant should have a language/speech assessment.

Appellant's supports coordinator testified that she does not believe that Appellant has a substantial functional limitation in the area of receptive and expressive language as it is defined in the MMHC. Appellant's supports coordinator indicated that in the 7-8 years she has been working with Appellant, language has never been noted as an issue and Appellant has not received language therapy services in the past. However, Appellant's supports coordinator indicated that because of Appellant's mild mental retardation, communication with him can be slow and things do have to be repeated. Appellant's supports coordinator also indicated that certain subjects, such as issues about his weight or his family, can really set Appellant off. Appellant's supports coordinator testified that she does not think Appellant's current services are best for him and that going forward Appellant's emotional impairment is going to cause more problems for him than his developmental disability. Appellant's supports coordinator

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indicated that there are better services available for Appellant and that she has recommended these services to Appellant's family.

At the conclusion of the hearing, the parties agreed to work together to get the right services in place for Appellant.

Based on the competent and material evidence on the whole record, the Appellant has failed to prove, by a preponderance of evidence, that he met the Michigan Mental Health Code definition of a person with a developmental disability. While Appellant's witnesses suggested that Appellant might have a substantial functional limitation in the area of receptive and expressive language, no evidence supporting this assertion was presented. Appellant has not received speech or language therapy in the past, according to the records presented. This is not to suggest that Appellant no longer needs or is eligible for services. During the hearing, a number of different services that Appellant would be eligible for were discussed and the parties agreed to work together to get Appellant into the best services to meet his needs. However, based on the evidence presented, Appellant does not meet the MMHC definition of a person with a developmental disability and [REDACTED] termination of his services under that definition was proper.

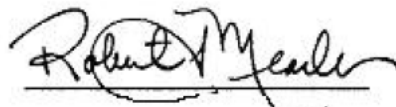
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

Appellant does not meet the Mental Health Code eligibility requirements for services provided by CMH for persons with a developmental disability.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.



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

[REDACTED]
cc: [REDACTED]

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Date Signed: June 13, 2013

Date Mailed: June 14, 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.