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.** 2013-35536 CMH

[redacted] [redacted]

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held [redacted] [redacted] [redacted] the Appellant, appeared and testified on his own behalf.

[redacted], Manager of Due Process and Customer Services, represented [redacted] (CMH or Department). [redacted] Psychologist with [redacted], appeared as a witness for the CMH.

ISSUE

Does the Appellant meet the eligibility requirements for Medicaid Specialty Supports and Services through the CMH?

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 male, born [redacted] (Exhibit 1, page 1)

2. The CMH is a contractor of the Michigan Department of Community Mental Health (MDCH) pursuant to a contract between these entities.

3. The CMH is required to provide Medicaid covered services to Medicaid eligible clients it serves.

4. The Appellant's Axis I diagnoses are: rule out mood disorder NOS, rule out post-traumatic stress disorder, cocaine dependence, alcohol dependence and cannabis dependence. (Exhibit 1, page 7)

5. The Appellant is prescribed [redacted] from his primary care provider. (Exhibit 1, page 2)

6. The Appellant is enrolled in a Medicaid Health Plan (MHP), [redacted] through which the Appellant can access routine mental health supports to manage his mild to moderate symptoms. (Exhibit 1, pages 15 and 27; Psychologist Testimony)

7. The Appellant was screened for mental health services on [redacted] Based on the screening, it was determined that the Appellant was not eligible for Medicaid Specialty Supports and Services through the CMH because he did not meet the eligibility criteria as someone with a serious mental illness or developmental disability. (Exhibit 1, pages 1-15)

8. On [redacted] the CMH sent the Appellant a Notice and Hearing Rights that the services he applied for were denied because he did not meet eligibility criteria for the services requested. The notice informed the Appellant of his right to a fair hearing. (Exhibit 1, pages 16-18)

9. On [redacted] the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. (Exhibit 2)

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 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—

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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.*

The CMH Representative indicated that the Michigan Mental Health Code definition of developmental disability and serious mental illness were utilized by the CMH to determine Appellant was not eligible for CMH services. Those definitions 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*
>
> "Serious mental illness" means:
>
> 330.1100d Definitions; S to W.
> Sec. 100d.

* * * *

> "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.
>
> *MCL 330.1100d*

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility, Section 1.6* makes the distinction between the CMH responsibility and the Medicaid Health Plan (MHP) responsibility for Medicaid outpatient mental health benefits. The Medicaid Provider Manual sets out the eligibility requirements as:

In general, MHPs are responsible for outpatient mental health in the following situations:	**In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:**
• The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or	• The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to

impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal clinical (self/other harm risk) instability.	perform daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills).
• The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.	• The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse. • The beneficiary has been treated by the MHP for mild/moderate symptomatology and temporary or limited functional impairments and has exhausted the 20-visit maximum for the calendar year. (Exhausting the 20-visit maximum is not necessary prior to referring complex cases to PIHP/CMHSP.) The MHP's mental health consultant and the PIHP/CMHSP medical director concur that additional treatment through the PIHP/CMHSP is medically necessary and can reasonably be expected to achieve the intended purpose (i.e., improvement in the beneficiary's condition) of the additional treatment.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, January 1, 2013, page 3.

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and

determine the amount or level of the medically necessary Medicaid services that are needed to reasonably achieve his goals.

The CMH witness testified that she is a Limited Licensed Psychologist. The CMH witness testified that she reviewed the access screening of the Appellant's case, which included mental health and substance abuse history, mental health symptoms, mental status, risk for self-harm, assessment of alcohol or substance abuse, five axis diagnoses, and eligibility assessments for serious mental illness and developmental disability. It was noted that no severe symptoms were reported and there were no current suicidal ideations or attempts nor homicidal ideations. It was also noted that the only active diagnoses are substance abuse diagnoses and both the mental health diagnoses are listed as rule outs rather than active. The CMH witness testified that she did not find anything to support a finding that Appellant had a serious mental illness or developmental disability in the assessment screening. The access screening interpretation indicates the Appellant's primary care physician recently prescribed [redacted] to help with depression associated with continued pain and pain symptoms and further that the Appellant was referred to his MHP for access to ongoing routine mental health supports to manage mild to moderate symptoms. (Exhibit 1, pages 1-15; Psychologist Testimony) Accordingly, the CMH denied services for the Appellant because he did not meet the eligibility criteria as someone with a serious mental illness or developmental disability. (Exhibit 1, pages 16-18)

The Appellant disagrees with the denial and testified he is on disability and takes pills for anxiety and depression. The Appellant has severe moods, sometimes he is okay and sometimes he is very angry and does not know why. The Appellant is more depressed than before he was shot. Initially after the Appellant was shot, he stayed in his house. The Appellant could not be around people for a long time. The Appellant still has some problems with people being behind him. The Appellant stated he had a learning disability through the 12th grade. The Appellant also acknowledged he had a relapse, he was sent to inpatient treatment and there is a therapist there that helps him. At one point, the Appellant had been prescribed many medications and he was not feeling well, so some medications were stopped. The Appellant guessed that his current medication helps calm him, and indicated he is not smoking as much. The Appellant stated that maybe what he needs is a case manager, rather than a counselor. Further, the Appellant was discharged from new paths the date of the [redacted] hearing because of something he did and he has nowhere to go. (Appellant Testimony)

The Appellant bears the burden of proving by a preponderance of the evidence that he is eligible for CMH services. Here, the Appellant did not prove by a preponderance of the evidence that he was eligible for CMH services because the evidence does not demonstrate that he has a serious mental illness or developmental disability. The symptoms at the time of the assessment were mild

to moderate, the primary care physician prescribed medication, and the Appellant can access ongoing routine mental health supports to manage mild to moderate symptoms through the MHP. As indicated above, those services are properly administered through a Medicaid Health Plan, not a CMH.

DECISION AND ORDER

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

The CMH properly determined that the Appellant does not meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

Date Signed: [redacted]

Date Mailed: [redacted]

CL/db

cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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.