

**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. 2013-14246 CMH

Case No. ██████████

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 ██████████. ██████████, Mother, represented the Appellant. ██████████, Home Based Therapist, ██████████, Psychologist, ██████████, ██████████, Facilitator, and ██████████, Aunt, appeared as witnesses for the Appellant.

██████████, Fair Hearings Officer, represented the ██████████ ("CMH"). ██████████, ██████████ Utilization Management Supervisor, ██████████, Customer Services Specialist, ██████████, ██████████ Utilization Management Worker, and ██████████, Family Therapist, appeared as witness for the Department.

ISSUE

Did the CMH properly deny the Appellant's request for residential placement?

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, DOB: ██████████. The Appellant is Medicaid eligible and receives services through Northern Lakes CMH.
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.
3. The Appellant's diagnoses include: mood disorder, history of bipolar affective disorder, oppositional defiant disorder, post traumatic stress disorder, conduct disorder childhood-onset type, and bipolar disorder. The Appellant would be considered a child with a serious emotional disturbance. (Exhibits E, J, 1, and 3;

Psychologist Testimony)

4. The Appellant currently lives in the family home with her mother, a younger sister and a younger brother. The Appellant is on probation for assaultive behaviors and has had multiple probation violations. The Appellant attends school, has not been diagnosed with any developmental disorders nor been in special education classes. (Exhibit E; Exhibit 2 pages 5-7; Testimony)
5. On [REDACTED], [REDACTED] CMH sent an Adequate Action Notice to the Appellant's mother notifying her that long term hospitalization at the [REDACTED] Center was denied based on not being medically necessary at this time. The notice included rights to a Medicaid fair hearing. (Exhibit G)
6. On [REDACTED], the Appellant's request for a hearing was received by the Michigan Administrative Hearing System. (Exhibit L)

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].

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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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

This hearing is limited to reviewing the [REDACTED] denial of Medicaid coverage for residential placement. However, it is noted that there may have been some confusion about coverage for residential placement due to a previous authorization and admission for residential placement at the [REDACTED] Center from [REDACTED] through [REDACTED]. The Fair Hearings Officer clarified that while there was a previous authorization, the approval was made in error and this admission was not covered by Medicaid. (Fair Hearings Officer Testimony)

The evidence indicates there is also some confusion regarding when and how the current request for residential placement was made. It appears the [REDACTED] Psychiatric Inpatient, PHP and Crisis Residential Screening was never received by the CMH. (Exhibit 2, pages 1-2; Fair Hearing Officer Testimony) However, the CMH was aware that long term placement was sought for the Appellant at the time of a [REDACTED] meeting at Pine Rest. (Exhibit A)

The CMH arranged for a telemedicine psychiatric evaluation on [REDACTED] regarding admission to the [REDACTED] Center. The Psychiatrist's report lists diagnoses of mood disorder, history of bipolar effective disorder, oppositional defiant disorder, history of post-traumatic stress disorder, and rule out selective mutism. While there were significant concerns for the Appellant and her role in the family, the Psychiatrist was not comfortable recommending long-term State hospitalization for a child to deal with personality and family dynamic issues. The Psychiatrist recommended that all avenues be explored for the Appellant to be placed out

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of the home for some time, possibly with relatives or therapeutic foster placement, while further therapeutic intervention can be pursued with a goal of reunification. (Exhibit E)

On [REDACTED], [REDACTED] CMH sent an Adequate Action Notice to the Appellant's mother notifying her that long term hospitalization at the [REDACTED] Center was denied based on not being medically necessary at this time. (Exhibit G)

The Appellant is currently receiving Medicaid covered services, including intensive home-based services and [REDACTED] services. Beyond considering the Appellant moving in with relatives or therapeutic foster placement, there has been recommendations of additional services for the Appellant and her family including continuing and possibly increasing the intensive home-based services, respite, and participation in an Adolescent DBT group for the Appellant to learn emotional regulation and distress tolerance. Further, if the Appellant is in crisis, assessment and facilitation of admission to a community hospital for acute hospitalization, if indicated, is available. (Exhibits H; Access Utilization Management Worker Testimony; Family Therapist Testimony) The CMH asserted that if the Appellant and her family utilized these additional services, they would be appropriate in length, scope and duration to meet the needs of the Appellant.

The Appellant's diagnoses include: mood disorder, history of bipolar affective disorder, oppositional defiant disorder, post traumatic stress disorder, conduct disorder childhood-onset type, and bipolar disorder. The Appellant would be considered a child with a serious emotional disturbance. (Exhibits E, J, 1, and 3; Psychologist Testimony)

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.3* provides:

2.3 LOCATION OF SERVICE

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be

within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- Nursing facility mental health monitoring;
- Psychiatric evaluation;
- Psychological testing, and other assessments;
- Treatment planning;
- Individual therapy, including behavioral services;
- Crisis intervention; and
- Services provided at enrolled day program sites.

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

Medicaid does not cover services delivered in Institutions of Mental Disease (IMD) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is for the purpose of transitioning a child out of an institutional setting (CCI). The following mental health services initiated by the PIHP (the case needs to be open to the CMHSP/PIHP) may be provided within the designated timeframes:

- Assessment of a child's needs for the purpose of determining the community based services necessary to transition the child out of a CCI. This should occur up to 60 days prior to the anticipated discharge from a CCI.
- Wraparound planning or case management. This should occur up to 60 days prior to discharge from a CCI.

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities). (Emphasis added).

Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section, October 1, 2012, pages 9-10.

The Appellant's mother, Home Based Therapist, Psychologist, ██████████ Facilitator and the Appellant's aunt all described the very serious concerns regarding the Appellant and her family. The Appellant has been both verbally threatening and at times physically aggressive. The services tried in the past have not been very successful, though the prior hospitalization at the ██████████ Center showed some promise. Further, concerns with some of the suggested alternatives to residential placement were voiced. Understandably, residential placement at the ██████████ Center is sought and there has been hesitation to try the suggested alternatives. (Mother, Home Based Therapist, Psychologist, ██████████ Facilitator and Aunt Testimony)

However, the relevant policy from the Medicaid Provider Manual establishes that Medicaid does not cover residential services provided to children with a serious emotional disturbance in a ██████████ Institution unless it is for the purpose of transitioning a child out of an institutional setting (CCI). The policy further provides that Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint.

The Appellant bears the burden of proving by a preponderance of the evidence that she meets the criteria for residential placement in accordance with the Code of Federal Regulations (CFR). The Appellant has not met this burden to establish that she meets the criteria for such a placement. The evidence establishes the Appellant has a serious emotional disturbance and does not indicate any developmental disability. The CMH has shown that there are services available in the community which they believe can assist the Appellant and her family in dealing with mental health and related behavioral problems.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

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

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CC:



Date Mailed: 2/13/2013

***** 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.