

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P. O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax (517) 373-4147

**IN THE MATTER OF:**

██████████

Docket No. 2013-14247 CMH  
Case No. ██████████

Appellant

\_\_\_\_\_ /

**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 request for a hearing filed on behalf of Appellant/Petitioner.

After due notice, a hearing was held on ██████████. Attorney T ██████████ appeared on behalf of Appellant. ██████████, Appellant's ██████████, Appellant's ██████████ and ██████████, Appellant's Community Living Supports worker; testified as witnesses for Appellant. ██████████, attorney and Due Process Hearings Coordinator, appeared on behalf of the Oakland County Community Mental Health Services Program (CMHSP). ██████████ Igren, Supervisor of the Children's Waiver Program, and ██████████, Compliance Coordinator, from the Macomb-Oakland Regional Center (MORC) appeared as a witness for the CMHSP.

Following the completion of the hearing, the record was left open an additional two weeks so that Appellant could submit additional information regarding his condition and the proposed residential placement. Appellant subsequently submitted one additional exhibit. (Petitioner's Exhibit 6).

**ISSUE**

Did the CMHSP properly deny Appellant's request 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. Appellant is a ██████████ year-old ██████████ who has been diagnosed with Autism Spectrum Disorder, Intermittent Explosive Disorder, and Obsessive Compulsive tendencies. (Petitioner's Exhibit 1, page 1; Petitioner's Exhibit 2, page 1).

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2. Appellant receives special education services through the Royal Oak Schools. (Petitioner's Exhibit 2, page 1).
3. The CMHSP is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMHSP's service area.
4. While neither he individually nor his family as a whole have been approved for Medicaid, Appellant receives services from the CMHSP through the Children's Home and Community-Based Services Waiver Program (CWP). (Uncontested testimony during hearing).
5. Specifically, beginning [REDACTED], Appellant was approved for services such as Community Living Supports (CLS) in the amount of 46 hours per week, respite services in the amount of 22 hours per week, supports coordination. (Respondent's Exhibit B, pages 1-6; Uncontested testimony during hearing).
6. Appellant's initial person centered plan (PCP) developed on [REDACTED] also stated that a referral to a behavioral psychologist had been made and, upon completion of that assessment, appropriate goals would be added. That assessment was subsequently completed on or about [REDACTED] and monthly psychological services were added, in the form of monthly training sessions and quarterly non-family training sessions. (Respondent's Exhibit B, pages 11-17).
7. Appellant and his family utilized the psychological services/training sessions at first, but soon cancelled the services as Appellant's parents did not find them useful. (Testimony of [REDACTED]; Testimony of [REDACTED]).
8. Appellant has been seeing a private psychologist monthly. (Uncontested testimony during hearing; Petitioner's Exhibit 4)
9. As stated in the [REDACTED] Periodic Review of the Individual Plan of Service (IPOS), recreational therapy and music therapy were added to Appellant's services. (Petitioner's Exhibit 2, page 3).
10. The IPOS Periodic Review also described a request for residential placement:

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██████ continues to go through many staff. His ██████ has moved to Employer of Record but either staff do not return or are getting full time jobs. ██████ continues to interview but has requested a short term residential placement to work out behavioral and OCD needs. [Petitioner's Exhibit 2, page 1.]

11. On ████████████████████, the CMHSP sent Appellant written notice stating that the request for residential placement was denied. The reason given in the notice: "Residential Treatment is not a covered service." (Respondent's Exhibit A).
12. The Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant 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

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

In this case, as a preliminary matter, the CMHSP made a motion to dismiss the appeal on the basis that Appellant only receives services through the CWP and that residential placement is not a covered service within the CWP. The CMHSP is correct in noting that residential placement is not specifically identified as a covered service within the CWP in the list of covered services contained in the relevant portion of the Michigan Medicaid Provider Manual (MPM). See MPM, [REDACTED] version, Mental Health and Substance Abuse Chapter, Section 14.3. However, the opening section in the MPM on the CWP also expressly states:

The Children's Home and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

The Children's Waiver is a fee-for-service program administered by the CMHSP. The CMHSP will be held financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by the CMHSP and exceed the Medicaid fee screens or amount, duration and scope parameters.

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Services, equipment and Environmental Accessibility Adaptations (EAAs) that require prior authorization from MDCH must be submitted to the CWP Clinical Review Team at MDCH. The team is comprised of a physician, registered nurse, psychologist, and licensed master's social worker with consultation by a building specialist and an occupational therapist. [MPM, [REDACTED] version, Mental Health and Substance Abuse Chapter, Section 14 (emphasis added).]

Therefore, as Children's Waiver services are simply an enhancement and addition to regular Medicaid services, which do contemplate residential placements, this Administrative Law Judge finds that those services can be provided through the CWP.

To the extent residential placements can be authorized through the CWP, the CMHSP also argues that such a placement is prohibited in this case. Specifically, the CMHSP notes that, while Appellant's family is requesting that he be placed in a Child Caring Institutions (CCI), the MPM only allows residential placements in CCIs in certain circumstances:

**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.

\* \* \*

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).

\* \* \*

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced

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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). [MPM, [REDACTED] version, Mental Health and Substance Abuse Chapter, Section 2.3 (emphasis added).]

In this case, the record is not entirely clear as to the nature of CCI that Appellant's family wants him placed at, especially given that he may have both developmental disabilities and serious emotional disturbances. However, based on the evidence submitted by Respondent regarding the [REDACTED] for Autism Treatment and Research (Petitioner's Exhibit 3; Petitioner's Exhibit 6), it does appear that the facility is a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint.

In any event, even if the requested residential placement is a covered service under both the CWP and Medicaid in general, Medicaid beneficiaries are only entitled to medically necessary 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.

Here, the applicable [REDACTED] version of the Michigan Medicaid Provider Manual (MPM), Mental Health and Substance Abuse Chapter, Sections 2.5.C and 2.5.D provides in part:

**2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and

- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies. (Emphasis added)

#### **2.5.D. PIHP DECISIONS**

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
  - > deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - > experimental or investigational in nature; or
  - > for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. [emphasis added]

Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant,

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specifically his own home. Clearly, Appellant's placement in his own home is less restrictive than any residential placement. Furthermore, as noted above, "Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided."

Here, Appellant had only been receiving services in his home for a few months before the request for residential placement was made. While there were clearly many difficulties during that time period, it cannot be said at this time that this less restrictive level of treatment has been unsuccessful, especially where Appellant's ██████████ cancelled some of the authorized services and has failed to coordinate the services with its private psychologist.<sup>1</sup> Moreover, it is clear that the main problem Appellant's family is having is retaining staff and that the amount, scope and duration of the authorized services is sufficient. While this Administrative Law Judge appreciates the difficulties Appellant's family is having in retaining long-term staff, the MPM still requires that services be provided in the least restrictive, most integrated setting possible and difficulties in staffing alone do not justify a more restrictive level of services.

As discussed above, Appellant bears the burden of proving by a preponderance of the evidence that the requested residential placement is both a covered service in this case and is medical necessary in accordance with the Code of Federal Regulations. Here, Appellant did not meet the burden to establish that such placement was a medical necessity at the time the decision was made and the CMHSP's decision must therefore be affirmed.

**DECISION AND ORDER**

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

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<sup>1</sup>This Administrative Law Judge would also note that he must base his decision on information the Department had on hand when the denial of long-term residential placement was made. Hence, information provided by the Appellant regarding continuing difficulties in staffing or incidents that occurred after ██████████ cannot be a basis for the decision in this matter. The Agency, of course, is free to consider that information and revisit their denial at any time.

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**IT IS THEREFORE ORDERED** that:

The CMHSP's decision is **AFFIRMED**.

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

cc:

[REDACTED]

Date Mailed: February 15, 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.