

**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. 2013-17252 CMH
Case No. ██████████

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 ██████████. ██████████, Appellant's ██████████ appeared and testified on Appellant's behalf. ██████████, Appellant's ██████████ also appeared and offered testimony.

Attorney ██████████ represented the Ottawa County Community Mental Health Authority (CMH or Department). ██████████, Fair Hearing Officer; ██████████, Program Coordinator; and ██████████, Case Manager, appeared as witnesses for the Department.

ISSUE

Does the Appellant meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH as someone with a serious emotional disturbance?

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, born ██████████, who has been receiving services through CMH since ██████████ as a minor with a serious emotional disturbance. (Exhibit A, p 6; Testimony).
2. CMH is a contractor of the Michigan Department of Community Mental Health (MDCH) pursuant to a contract between these entities. (Exhibit A, pp 2-5; Testimony).
3. CMH is required to provide Medicaid covered services to Medicaid eligible Client's it serves.

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4. Appellant is diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), reactive attachment disorder (RAD) and fetal alcohol syndrome. (Exhibit 4).
5. On [REDACTED], [REDACTED], Appellant's Case Manager, completed a Child and Adolescent Functional Assessment Scale (CAFAS) assessment which showed that Appellant no longer met the eligibility criteria to continue to receive CMH services. (Exhibit A, pp 6-10).
6. On [REDACTED], CMH sent Appellant's [REDACTED] an Advance Action Notice informing them that Appellant no longer met the eligibility criteria for services as a minor with a serious emotional disturbance and that her services would be terminated. The notice informed Appellant of her right to a fair hearing. (Exhibit A, p 14).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Appellant's request for an Administrative Hearing. (Exhibit 4).

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

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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.

Under approval from the Center for Medicaid and Medicaid Services (CMS) the Michigan Department of Community Health (MDCH) operates a section 1915(b) waiver called the Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the MDCH to provide services under the Managed Specialty Service and Supports Waiver and other State Medicaid Plan covered services. CMH must offer, either directly or under contract, a comprehensive array of services, as specified in Section 206 of the Michigan Mental Health Code, Public Act 258 of 1974, amended, and those services/supports included as part of the contract between the Department and CMH.

“Serious emotional disturbance” is defined in the Mental Health Code as follows:

330.1100d Definitions; S to W. Sec. 100d.

* * * *

(2) “Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during 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 the Minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- a. A substance abuse disorder.

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- b. A developmental disorder.
- c. "V" codes in the diagnostic and statistical manual of mental disorders.

* * * *

MCL 330.1100d(2)

Per the Michigan Department of Community Health (MDCH) Technical Requirement for SED Children, the three following conditions must be met in order for a child/adolescent to be considered severely emotionally disturbed:

- Diagnosis
- Degree of Disability/Functional Impairment
- Duration/History

These conditions are defined as follows in the MDCH/CMHSP Mental Health Supports and Services Contract, Attachment C4.7.4:

Diagnosis. Serious emotional disturbance means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment as indicated below. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance: (a) a substance abuse disorder, (b) a developmental disorder, or (c) "V" codes in the diagnostic and statistical manual or mental disorders.

Degree of Disability/Functional Impairment. Functional impairment that substantially interferes with or limits the minor's role or results in impaired functioning in family, school, or community activities. This is defined as:

- A total score of 50 (using the eight subscale scores on the Child and Adolescent Functional Assessment Scale (CAFAS), or
- Two 20's on any of the first eight subscales of the CAFAS, or

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- One 30 on any subscale of the CAFAS, except for substance abuse only.

Duration/History. Evidence that the disorder exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual published by the American Psychiatric Association.

██████████, Appellant's Case Manager testified that she holds a Bachelor's of Science Degree in Psychology and a Masters Degree from ██████████ and that she holds an LMSW license in the State of Michigan. Appellant's Case Manager indicated that she has been with CMH for a little over two years and has been Appellant's Case Manger since ██████████. Appellant's Case Manager testified that she has been a certified CAFAS rater since ██████████ and that she has renewed her certification by attending training or completing a booster manual. (Exhibit A, p 11). Appellant's Case Manager indicated that she conducted the last two CAFAS assessments for Appellant; one on ██████████ and one on ██████████. (Exhibit A, p 10).

Appellant's Case Manager testified that Appellant met the eligibility criteria for CMH services following the August CAFAS because she scored 30 on one of the CAFAS subscales, namely the "Home" subscale. However, Appellant's Case Manager indicated that when the last CAFAS assessment was completed on ██████████, Appellant no longer met the criteria for services because she scored only a 10 on the "Home" subscale and a total score of only 20. Appellant's Case Manager testified that the CAFAS assessments were completed by interviewing Appellant's parents and reviewing the progress notes from Appellant's CLS workers.

██████████, Program Coordinator, testified that she is ██████████ supervisor, that she is also a certified CAFAS rater, and that she reviewed and met with ██████████ during Appellant's CAFAS assessments. ██████████ testified that she concurred with ██████████ scoring in Appellant's last two CAFAS assessments. ██████████ also testified that the MDCH requires CMH's to use the CAFAS tool and that the MDCH has indicated that the CAFAS tool is scientifically validated as reliable.

Appellant's ██████████ testified that the family is really only asking for respite services. Appellant's ██████████ admitted that the CLS workers' progress notes do make it look like Appellant was doing really great because Appellant often does well when working with people in the community. Appellant's actions at home, however, are much worse. Appellant's ██████████ testified that at home Appellant is very aggressive towards family members, throws things, kicks the walls and doors, throws temper tantrums, and swears. Appellant's ██████████ testified that she did not meet with Appellant's Case Manager prior to the latest CAFAS assessment, but her ██████████ did.

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Appellant's ██████████ testified that when he met with Appellant's Case Manager in ██████████ he felt like the decision to terminate Appellant from receiving CMH services had already been made. Appellant's ██████████ testified that he felt like he was being cut-off when he was trying to relate what was going on in the home.

In response to Appellant's ██████████ testimony, Appellant's Care Manager testified that she had not made a decision yet with regard to Appellant's eligibility when she met with her ██████████ that the meeting with Appellant's ██████████ lasted for approximately 45 minutes, and that she did not cut-off Appellant's ██████████ during the meeting. Appellant's Care Manager also testified that even if she had been told about the behavior issues Appellant was having in the home, as testified to at the hearing by Appellant's ██████████ it would not have changed the scoring on the CAFAS assessment. Appellant's Care Manager testified that to get a higher score, Appellant would have needed to exhibit abrupt mood changes for no reason, whereas the behaviors described by Appellant's ██████████ involved behaviors that were in direct response to specific requests to do things. Appellant's Care Manager also pointed to Petitioner's Exhibit 3, a letter from ██████████, who had been providing respite services to Appellant. Appellant's Care Manager pointed out that the letter supports the finding that Appellant's behavior had improved significantly in recent months. Appellant's Care Manager also testified that there was no information in Appellant's Exhibit 5, a letter from her therapist, that would have changed Appellant's CAFAS score.

In this case, the CMH applied the proper eligibility criteria to determine whether Appellant was eligible for Medicaid covered mental health services and properly determined she is not. Appellant's test results showed she was not currently a child with a severe emotional disturbance. The most recent CAFAS assessment demonstrated that Appellant had, at most, mild symptoms interfering with her ability to function within the community. Given that Appellant's latest CAFAS score was only 20, she did not meet the criteria for continued eligibility for continued CMH services. Should Appellant's condition worsen, she is free to request another assessment. Accordingly, Appellant does not meet the eligibility criteria for Medicaid Specialty Supports and Services through 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.

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IT IS THEREFORE ORDERED THAT:

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

/s/

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

cc:



Date Mailed: January 31, 2013

***** 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.