

**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:

██████████,

Appellant

Docket No. 2013-18836 CMH
Case No. ██████████

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 Appellant's request for a hearing.

After due notice, a hearing was held on January 23, 2013. Appellant appeared and testified on his own behalf. ██████████, Social Worker/Medicaid Fair Hearings Officer, appeared on behalf of the Detroit-Wayne County Community Mental Health (CMH). ██████████, M.D., also appeared as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for services?

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 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.
2. Appellant is a ██████ year-old male who reports that he has been diagnosed with Major Depressive Disorder and Anxiety Disorder. (Respondent's Exhibit B, pages 1, 10).
3. On ██████████, Appellant applied for mental health services through the CMH and underwent a clinical screening. (Respondent's Exhibit B, pages 1-11).
4. As provided in that screening, Appellant was seeking services because he does not sleep without medication, does not eat much, has trouble controlling his rage, and gets nervous over little things. (Respondent's Exhibit B, pages 1, 4, 10).

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5. Appellant also reported that he has been on medications for over 15 years and that he stopped going to a psychiatrist six months prior to the screening, but that he wants to go a psychiatrist closer to his home. (Respondent's Exhibit B, pages 1-2).
6. On the same day of the screening, the CMH sent Appellant written notice that it was denying his request for CMH services because he was not eligible for such services. (Respondent's Exhibit A, pages 1-2).
7. While Appellant's request was denied, he is still able to get outpatient therapy as he has done in the past. (Uncontested testimony at hearing).
8. Appellant filed a Local Appeal regarding the denial, but that local appeal was denied on [REDACTED]. (Uncontested testimony during hearing).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant.

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

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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.]

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... [42 USC 1396n(b).]

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.

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy regarding eligibility for mental health services and a beneficiary must meet the eligibility requirements for services. With respect to eligibility, the MPM states:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record. [MPM, Mental Health/Substance Abuse Section, [REDACTED], page 3.]

Here, Appellant is not eligible for services because he cannot demonstrate that he has a mental illness, serious emotional disturbance or developmental disability. The state of Michigan's Mental Health Code, MCL 330.1100d, defines those first two conditions as follows:

2. "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor

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

3. "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.

Additionally, with respect to developmental disabilities, the Mental Health Code, (MCL 330.1100a(21)), provides:

(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:

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- 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.
- b. If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

In this case, the CMH's witness, ██████████, did not make the initial decision to deny services or the subsequent denial of Appellant's local appeal. However, she did review those decisions and agrees with them for the reasons offered by the people who actually made the decisions.

During the hearing, ██████████ testified that, while Appellant did report during the screening that he had been diagnosed with both Major Depressive Disorder and Anxiety Disorder, Appellant only exhibits mild to moderate symptoms and his conditions do not rise to the level necessary to qualify for CMH services. It is undisputed that Appellant does not have any suicidal or homicidal thoughts or plans, and that he has good independent living skills. Moreover, Appellant does not have a history of substance abuse and he was able to function well, with medications, until he stopped

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going to a psychiatrist. [REDACTED] also noted that Appellant is still able to get outpatient therapy, as he has done in the past, and that he may decide to go to free clinic to get evaluation for medication. Overall, Appellant cannot demonstrate any condition that has resulted in functional impairment that substantially interferes with or limits any major life activity.

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred in denying the request for services. In this case, Appellant has failed to meet that burden of proof. This Administrative Law Judge's jurisdiction is limited to reviewing the CMH's decision in light of the information available at the time it made its decision. Here, that information was provided by Appellant and it clearly demonstrates that, while he has diagnosed with depression and anxiety disorders, he did not meet the criteria for services. Therefore, the CMH's decision must 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 services given the information available at the time it made its decision.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

/s/

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

cc:



Date Mailed: March 4, 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.