

**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. 2013-40681 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 request for a hearing filed by Appellant/Petitioner.

After due notice, a hearing was held on ██████████. Attorney ██████████ appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Due Process Hearings Coordinator, appeared on behalf of the ██████████ (CMH or Department). ██████████, an Access Screener at ██████████, Inc., testified for the Department.

During the hearing, four exhibits were admitted: Petitioner's Exhibit 1 and Respondent's Exhibits A, B, and C. Appellant's representative also moved to admit other evidence, which this Administrative Law Judge did not have access to at the time. Respondent's representative did not object to the proposed evidence and the evidence was admitted and discussed during the hearing. Following the hearing, Appellant's representative provided the remainder of the evidence in groups of two pages, sixteen pages, and twenty-six pages. This Administrative Law Judge now admits that evidence as Petitioner's Exhibit 2, pages 1-2; Petitioner's Exhibit 3, pages 1-16; and Petitioner's Exhibit 4, pages 1-26.

**ISSUE**

Did CMH properly determine that the Appellant was not eligible for CMH 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. Appellant is a ██████ year-old Medicaid beneficiary. (Petitioner's Exhibit 4,

**Docket No. 2013-40681 CMH**  
**Decision and Order**

page 5).

2. In [REDACTED], Appellant fractured her right femur and was hospitalized. (Petitioner's Exhibit 4, page 18).
3. On [REDACTED], following her hospitalization, Appellant was admitted to a nursing facility for rehabilitation and strengthening. (Petitioner's Exhibit 4, page 18).
4. In [REDACTED], while in the nursing home, Appellant underwent a screening pursuant to the Department's OBRA program. (Petitioner's Exhibit 4).
5. The report following that OBRA screening noted that Appellant had been diagnosed with a developmental disability; anxiety disorder NOS; posttraumatic stress disorder; and mild mental retardation. (Petitioner's Exhibit 4, page 6).
6. Appellant was further noted to have a right femur fracture, asthma/sarcoidosis, coronary artery disease, diabetes, gastro-esophageal reflux disease, meningitis/mucormycosis, hypothyroidism. (Petitioner's Exhibit 4, page 6).
7. The OBRA screener also noted Appellant's impaired vision and that her left eye had been removed on [REDACTED]. (Petitioner's Exhibit 4, pages 12, 15).
8. With respect to Appellant's mental retardation/developmental disability status, the OBRA screener further stated that the diagnoses manifested before the age of 22, are likely to continue indefinitely, and resulted in substantial functional limitation in the areas of self-care, self-direction, and economic self-sufficiency. (Petitioner's Exhibit 4, page 22).
9. The OBRA assessment and report concluded that Appellant should continue with her short-term nursing home placement for completion of her rehabilitation. Upon completion, Appellant could be discharged to her home, with adequate supports and services in place; an assisted living setting; or an adult foster care home. (Petitioner's Exhibit 4, pages 9, 21, 23, 26).
10. In a letter dated [REDACTED], the Office of Nursing Home/OBRA Program of the Department notified Appellant that she:

qualifies for the level of services provided by a nursing facility and does not require specialized mental health/developmental

████████████████████  
**Docket No. 2013-40681 CMH**  
**Decision and Order**

disabilities services, but may need other mental health/developmental disabilities services.

\* \* \*

Based on this determination, ██████████ ██████████ may continue to reside in a nursing facility and may choose to receive mental health/developmental services, as needed.

The reason for the determination is that ██████████ physical, mental, and psychosocial needs can be adequately met in a nursing facility. [Petitioner's Exhibit 4, pages 3-4.]

11. Appellant subsequently applied for services through the CMH.
12. The CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area.
13. In turn, the CMH contracts with ██████████, Inc. ("██████████") to have ██████████ perform eligibility screening.
14. On ██████████, Appellant underwent a screening for developmental disability at ██████████. Both Appellant and ██████████ were present for that assessment. ██████████ performed the screening. (Respondent's Exhibit B, pages 1-7).
15. In that screening, ██████████ described Appellant's diagnoses as anxiety disorder NOS; mild cognitive impairment; and a history of emotional abuse. (Respondent's Exhibit B, page 5).
16. ██████████ also noted Appellant as suffering from high blood pressure; thyroid condition; diabetes; seizures; and fungal meningitis in her right eye. The meningitis had also affected her brain and led to the removal of one of her eyes. (Respondent's Exhibit B, pages 2, 7).
17. ██████████ further noted that Appellant had educational problems, a problem with her primary support group, and other psychosocial and environmental problems. (Respondent's Exhibit B, page 5).

████████████████████  
**Docket No. 2013-40681 CMH**  
**Decision and Order**

18. With respect to a potential developmental disability, ██████ found that there was an indication or concern about the presence of a mental and/or physical impairment: EI. (Respondent's Exhibit B, page 4).
19. ██████ also found that the impairment manifested before the age of ██████ and is likely to continue indefinitely. (Respondent's Exhibit B, page 4).
20. ██████ further found that, while Appellant has a substantial functional limitation in the area of learning, she did not have such a limitation in the areas of self-care; receptive and expressive language; mobility; self-direction; capacity for independent living; and economic self-sufficiency. (Respondent's Exhibit B, pages 4-5).
21. ██████ reviewed the screening with her supervisor and, based on her notes and findings, they concluded that Appellant did not meet the criteria for a having a developmental disability because she only had a substantial functional limitation in one area of major life activity. (Respondent's Exhibit B, page 5; Testimony of ██████).
22. Appellant requested a second opinion and, on ████████████████████, another assessment/screening was performed. (Respondent's Exhibit A, pages 1-2).
23. ████████████████████ performed that second assessment. (Petitioner's Exhibit 2, page 3).
24. During that second assessment, ██████ found that Appellant did not meet the criteria for developmental disability as she only had substantial functional limitations in two areas of major life activities: learning and self-direction. (Respondent's Exhibit A, page 1).
25. Appellant was notified on that decision in writing in a letter from the CMH dated ████████████████████. The letter also noted Appellant's right to appeal the decision. (Petitioner's Exhibit 2, page 3).
26. On ████████████████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing with respect to the denial in this case. The Request also noted that Appellant has a developmental disability and has substantial functional limitations in the areas of learning; self-direction; capacity for independent living; and economic self-sufficiency. (Petitioner's Exhibit 1, page 1).

**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).

**Docket No. 2013-40681 CMH**  
**Decision and Order**

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 she 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

**Docket No. 2013-40681 CMH**  
**Decision and Order**

(CMS) the Department of Community Health (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver.

The CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver. In turn, the CMH contracts with [REDACTED] to have [REDACTED] perform eligibility screening.

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy regarding eligibility for mental health services and a beneficiary must met 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, pages 3.]

Here, the only issue is whether Appellant has a developmental disability. The CMH's representative indicated that the Michigan Mental Health Code definition of developmental disability was utilized by CMH to determine Appellant was not eligible for CMH services. That definition 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.

████████████████████  
**Docket No. 2013-40681 CMH**  
**Decision and Order**

- (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.]

For purposes of simplifying the application of the Mental Health Code definition to Appellant's facts, in general, the Appellant must meet four criteria: 1) a mental or physical impairment; 2) manifestation before age 22; 3) the impairment is likely to continue indefinitely; and 4) the impairment results in substantial functional limitations in three or more areas of major life activity.

There is dispute between the parties regarding whether the Appellant meets the criteria. However, it is stipulated that Appellant has mental impairments; that the impairments manifested before the age of █████; and that the impairments are likely to continue indefinitely.

Therefore, to meet the definition of developmental disability, Appellant must only demonstrate that the impairments or combination of impairments result in substantial functional limitations in three or more areas of major life activity.

Respondent concedes that Appellant has substantial functional limitations in the areas of learning and self-direction. Appellant argues that she also has substantial functional limitations in the areas of capacity for independent living and economic self-sufficiency.

With respect to Appellant's capacity for independent living and economic self-sufficiency, both █████ and █████ found that Appellant did not have substantial functional limitations in those major life activities.

In making her determination regarding Appellant's capacity for independent living, █████ noted that "█████ receives SSD for herself and from her dad. █████ lives in Section 8 housing. █████ is able to manage her medications on her own." █████ similarly found that

Miss █████ is able to get up each day on her own, fix her own breakfast, groom herself, get dressed and prepare for the day. She does her physical therapy exercises on her own and knows to ask neighbors if needed. [Respondent's Exhibit A, page 2.]

██████████  
**Docket No. 2013-40681 CMH**  
**Decision and Order**

Regarding Appellant's economic self-sufficiency, ██████ wrote:

██████ did know how many quarters in a dollar, did not know how many quarters in five dollars, she did not know how much change she would receive from \$█████ if she spent \$█████. She uses a checking account to pay her bills and ██████ stated that she uses a calculator to figure out how much money she has left. She receives SSI monthly. ██████ has a work history over the years including working at ██████, ██████, Restaurants, ██████, ██████, ██████, ██████ and ██████. Her last job was with ██████ – she worked for about 90 days and they let her go because they said she was not fast enough. [Respondent's Exhibit B, page 6.]

██████ similarly based her determination on the following facts:

Miss ██████ is on social security disability and gets a direct deposit monthly. She is her own payee. She has struggled a few times with over drafting her account, but this is not common. ██████ is currently on section 8 housing and has Medicare and Medicaid. ██████ has set up automatic bill pay for many of her bills and is able to utilize her checkbook to pay the others. [Respondent's Exhibit A, page 2.]

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred by finding that she was ineligible.

Here, Appellant and her representative do not dispute the general basis for ██████ findings, but they do argue that the CMH ignored relevant information, such as Appellant's hearing and vision impairments. They also argue that, while Appellant does live alone, she is only able to do so because of the significant training and assistance she receives from others. Appellant's representative further notes that the OBRA screener found that Appellant has substantial functional limitations in 3 areas of major life activities, including economic self-sufficiency.

However, the findings of the OBRA screener are not binding on the CMH and the CMH ██████ must make its own independent determination. In this case, it is also not entirely clear what the OBRA screener's conclusions were based on. Additionally, while it is undisputed that Appellant has significant medical issues and complications from those issues, not all of them are related the impairments at issue in this case, *i.e.* the ones that manifested before she was ██████ years-old. Moreover, Appellant may have received significant training to get to the point where she is at now

**Docket No. 2013-40681 CMH**  
**Decision and Order**

with respect to her capacity for independent living and economic self-sufficiency, but that does not change the fact that she is less limited than suggested by Appellant.

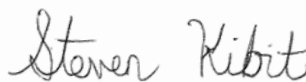
Given the above evidence, Appellant has failed to meet her burden of proof and the CMH's denial of her application must be affirmed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly decided that Appellant does not meet the Mental Health Code eligibility requirements for services provided by CMH for persons with a developmental disability.

**IT IS THEREFORE ORDERED** that:

The CMH's eligibility decision is **AFFIRMED**.



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

Date Signed: 7/15/2013

Date Mailed: 7/15/13

cc:

**\*\*\* 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.