

**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. 2013-47450 QHP  
Case No. 36873944

**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 a request for a hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████. ██████ and ██████████, Appellant's parents, appeared and testified on his behalf. Attorney ██████████ appeared on behalf of ██████████, the Respondent Medicaid Health Plan ("MHP). Dr. ██████████ testified as a witness for Respondent.

**ISSUE**

Did the MHP properly deny Appellant's request for speech therapy 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 was born on ██████████ and was ██████ years-old at the time of the hearing. (Respondent's Exhibit A, page 10).
2. Appellant medical history includes a premature delivery at 30 weeks gestation, spastic quadriparesis, global development delay, chronic encephalopathy, and partial seizures. He has also been diagnosed with cerebral palsy, fetal alcohol syndrome, and epilepsy. (Respondent's Exhibit A, pages 22, 33).
3. Appellant has been receiving speech therapy services through his school. (Testimony of Vicki Shellnut).
4. Due to an illness and/or decline in neurological status in late ██████████, Appellant became less verbally interactive and his speech skills declined. (Respondent's Exhibit A, pages 21, 26).

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5. The MHP approved some speech therapy as transitional visits to see if Appellant speech would improve with therapy. (Testimony of Dr. ██████████).
6. Appellant utilized the speech therapy authorized through the MHP at the Center for Children's Rehabilitation associated with ██████████ ("██████████").
7. Due to a hospitalization, Appellant stopped receiving speech therapy at ██████████ after ██████████. His speech therapy resumed on ██████████. (Respondent's Exhibit A, page 20).
8. Appellant continued to receive speech therapy once a week at ██████████ through ██████████. (Respondent's Exhibit A, pages 11-21).
9. On or about ██████████, the MHP received a request made on behalf of Appellant for additional speech therapy services. (Respondent's Exhibit A, pages 9-10).
10. The request also included copies of progress reports from Appellant's speech therapy sessions at ██████████; a report following a neurology consultation completed in ██████████; a prescription for physical therapy, occupational therapy, and speech therapy; and a doctor's note asking that Appellant be excused from school. (Respondent's Exhibit A, pages 9-33).
11. On ██████████, the MHP sent Appellant written notice that the request for speech therapy services was denied. (Respondent's Exhibit A, pages 35-39).
12. Regarding the reason for the denial, the notice provided:

The reason for this action is that this service is not a covered benefit according to criteria that the member's condition is temporary in nature, but instead is due to a developmental delay/disability. According to the ██████████ ██████████ Member Handbook, such services as this are not covered in your benefit plan.

*Respondent's Exhibit A, page 35*

13. The notice of denial also provided:

The notes sent show you have spastic

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quadriparesis (unable to control or move your body/arms/legs on your own), global (all body systems) developmental delay and partial seizure activity. The request for speech therapy is for increasing your language skills and lip strength. This appears to be a developmental disability. The requested services are for habilitative (training of a functional skill) or developmental (help with meeting an age-related milestone) purposes rather than being rehabilitative (help with regaining a lost functional skill) or restorative (returning to normal) in nature. Services to treat and manage developmental delay and/or disability are not covered by the ██████████ benefit plan, as noted in the ██████████ Member Handbook, under the “Services Not Covered” section. However, these services are available through your local Intermediate School District (ISD). You may arrange for therapy services by contacting the ██████████ at ██████████.

*Respondent’s Exhibit A, page 35*

14. On ██████████ 13, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant in this case. (Petitioner’s Exhibit 1, pages 1-2).

**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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans. The Respondent is in one of those Medicaid Health Plans.

The Respondent is one of those MHPs.

The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services

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listed below. The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services

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- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
  
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSTD for persons under age 21

*Section 1.022(E)(1), Covered Services.  
MDCH contract (Contract) with the Medicaid Health Plans,  
October 1, 2009.*

- (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:
- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
  - A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
  - Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
  - An annual review and reporting of utilization review activities and outcomes/interventions from the review.

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- The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Contract, *supra*, p. 49

As stated in the Department-MHP contract language above, a MHP, "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

**5.3 SPEECH THERAPY**

The terms speech therapy, speech-language pathology, speech-language therapy, and therapy are used to mean speech and language rehabilitation services and speech-language therapy.

MDCH covers speech-language therapy provided in the outpatient setting. MDCH only reimburses services for speech-language therapy when provided by:

- A speech-language pathologist (SLP) with a current Certificate of Clinical Competence (CCC).
- An appropriately supervised SLP candidate (i.e., in their clinical fellowship year [CFY]) or having completed all requirements but has not obtained a CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.

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- A student completing his clinical affiliation under direct supervision of (i.e., in the presence of) an SLP having a current CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.

MDCH expects that all SLPs will utilize the most ethically appropriate therapy within their scope of practice as defined by Michigan law and/or the appropriate national professional association.

**For all beneficiaries of all ages**, speech therapy must relate to a medical diagnosis, and is limited to services for:

- Articulation
- Language
- Rhythm
- Swallowing
- Training in the use of a speech-generating device
- Training in the use of an oral-pharyngeal prosthesis
- Voice

**For CSHCS beneficiaries** (i.e., those not enrolled in Medicaid; only enrolled with CSHCS), therapy must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing the care of the beneficiary.

Therapy must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess the beneficiary for deficits, develop a treatment program and provide therapy). Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family member, or caregiver) would not be reimbursed as speech therapy by MDCH.

For beneficiaries of all ages, therapy is **not** covered:

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.
- If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.
- If it is designed to facilitate the normal progression of development without compensatory techniques or processes.
- If continuation is maintenance in nature.
- If provided to meet developmental milestones.
- If Medicare does not consider the service medically necessary.

### **5.3.A. DUPLICATION OF SERVICES**

Some areas (e.g., dysphagia, assistive technology) may appropriately be addressed by more than one discipline (e.g., OT, PT, speech therapy) in more than one setting. MDCH does not cover duplication of services, i.e., where two disciplines are working on similar areas/goals. It is the treating therapist's responsibility to communicate with other practitioners, coordinate services, and document this in his reports.

### **5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES**

School-aged beneficiaries may be eligible to receive speech-language therapy through multiple sources. Educational speech is expected to be provided by the school system and is not covered by MDCH or CSHCS. Examples of educational speech include enhancing vocabulary, improving sentence structure, improving reading, increasing attention span, and

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identifying colors and numbers. Only medically necessary therapy may be provided in the outpatient setting. Coordination between all speech therapy providers should be continuous to ensure a smooth transition between sources.

Outpatient therapy provided to school-aged children during the summer months in order to maintain the therapy services provided in the school are considered a continuation of therapy services when there is no change in beneficiary diagnosis or function. Prior authorization is required before initiating a continuation of therapy.

If a school-aged beneficiary receives medically necessary therapy services in both a school setting (as part of an Individualized Education Plan [IEP]) and in an outpatient setting, coordination of therapy between the providers is required. Providers are to maintain documentation of coordination in the beneficiary's file.

*Department of Community Health,  
Medicaid Provider Manual, Outpatient Therapy Section  
Version Date: January 1, 2013, pages 18-20.*

As discussed above, the MHP denial of the request for speech therapy stated that Appellant's condition is due to a developmental delay or disability and not temporary in nature; services to treat and manage developmental delays or disabilities are not covered by the MHP's benefit plan; services for habilitative or developmental purposes, rather than being rehabilitative or restorative purposes, are not covered; such services are available through Appellant's school district. (Respondent's Exhibit A, page 35).

Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in denying that request. Here, Appellant has failed to meet that burden.

The earliest progress report in the record, from ██████████, mention a recent regression in Appellant's skills due to illness (Respondent's Exhibit A, page 21) and the report following the neurological consultation in ██████████ also provides that Appellant has suffered a decline in neurological status over the last month and became less verbally interactive. (Respondent's Exhibit A, page 26). However, as testified to by Dr. ██████████, Appellant was approved for temporary speech therapy in the past for that reason and the temporarily approved therapy has run its course, with Appellant improving at first and then stabilizing. (Testimony of Dr. ██████████).

Additionally, while speech therapy was temporarily approved in the past, the evidence in the record does not support Appellant's representatives' position that continuing speech therapy would be for rehabilitative purposes and expected to result in improvement or elimination of the stated problem within a reasonable amount of time. The progress

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reports submitted along with Appellant's request only contain general, long-term goals that are better associated with habilitative or developmental goals. (Respondent's Exhibit A, pages 11-21). Those progress reports also fail to identify any particular change in medical or functional status affecting speech that the speech therapy is specifically attempting to improve or eliminate. (Respondent's Exhibit A, pages 11-21). Appellant's witnesses claim that the speech therapist through Beaumont is working with Appellant for rehabilitative purposes (Testimony of Appellant's representatives), but those claims are not reflected in the evidence.

The fact that only general and long-term goals are identified in the progress reports is particularly significant in this case as it is undisputed that Appellant has a developmental delay and that he has always been receiving speech therapy at his school for educational purposes; habilitative purposes; assistance with his normal progression of development; and assistance in meeting his developmental milestones. (Testimony of [REDACTED]). Speech therapy for such purposes is not covered by the MHP under the clear policy described above and, based on the evidence here, that is what Appellant appears to be requesting through the MHP.

Appellant's witnesses also testify and argue that Appellant's medications have now stabilized and that he has a better opportunity than before for rehabilitating his lost functional skills and returning to the way he was. (Testimony of Appellant's representatives). However, this Administrative Law Judge's jurisdiction is limited to reviewing the MHP's decision in light of the information it had at the time it made that decision. To the extent Appellant's circumstances have changed since the denial of speech therapy in this case, he and his representatives remain free to re-request speech therapy from the MHP in the future.

With respect to the issue before this Administrative Law Judge, Appellant has failed to meet his burden of proving that the MHP erred in denying the request for speech therapy.

[REDACTED]  
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**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

The Medicaid Health Plan's decision is **AFFIRMED**.

*Steven Kibit*

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

[REDACTED]  
Date Signed: 8/1/2013

Date Mailed: 8/1/2013

cc: [REDACTED]

**\*\*\* 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.