

**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:**

Docket No. 2013-53856 CMH

██████████

██████████

██████████

Appellant

\_\_\_\_\_ /

**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 Tuesday, ██████████. Attorney ██████████ appeared on behalf of the Appellant. ██████████ Appellant's mother and guardian, testified on the Appellant's behalf. The Appellant also testified on his own behalf.

██████████, appeared on behalf of ██████████ County Community Mental Health (CMH), and represented the Department. ██████████ LPC, CAADC, LLMSW Access Department Director and ██████████, M.D., M.P.H. appeared as witnesses for the Department.

**ISSUE**

Whether CMH acted properly when it determined that the Appellant did not meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH as a developmentally disabled person?

**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 male (██████████) Medicaid beneficiary, who requested Medicaid covered services through CMH as a person with a developmental disability on ██████████ (Exhibits B & F and testimony).
2. CMH is a contractor of the Michigan Department of Community Mental Health (MDCH) pursuant to a contract between these entities.

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3. CMH is required to provide Medicaid covered services to Medicaid eligible clients it serves.
4. Appellant has been diagnosed with a traumatic brain injury (TBI), suffered in ██████████. (Exhibits B, C, F, 2, 3, 6 and testimony).
5. On ██████████, ██████████ LPC, CAADC, LLMSW, saw Appellant and his mother/guardian for a routine eligibility screening in the CMH Access Center. ██████████. ██████████ determined that Appellant did not meet the eligibility criteria to receive services as a person with a severe mental illness or as a person with a developmental disability. (Exhibits B, F and testimony).
6. On ██████████, ██████████ M.D., M.P.H., saw Appellant for a second opinion regarding his eligibility for CMH services. ██████████ determined that Appellant did not have a persistent severe mental illness or a developmental disability that would qualify Appellant for CMH services. (Exhibits C, F and testimony).
7. On ██████████, CMH sent Appellant's mother/guardian a resolution letter regarding a local appeal of their denial of services and the request for a second opinion. The letter advised that the Appellant did not present with a severe mental illness or a developmental disability and thus did not qualify for services CMH. Appellant's mother/guardian was advised of her right to request a Medicaid fair hearing to appeal this determination.
8. On ██████████, MAHS received the Appellant's request for an Administrative Hearing signed by the Appellant's mother/guardian along with her Attorney's signature. The request for a hearing alleged that the Appellant was functionally eligible to receive services through CMH as an individual with a developmental disability, resulting from a traumatic brain injury he sustained when he was ██████████ years old.

**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.

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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 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.

[REDACTED], the [REDACTED], for [REDACTED] CMH stated she received a BA in Psychology in [REDACTED] and a MA in Counseling in [REDACTED]; she is a licensed professional counselor and a certified advanced alcohol and drug counselor in [REDACTED]. [REDACTED] stated she has worked for [REDACTED] CMH since [REDACTED] and has been doing assessments for clinical eligibility since she started with [REDACTED] CMH in [REDACTED]. [REDACTED] offered her professional opinion that based on her clinical assessment the Appellant did not present as eligible for CMH services as either an individual with a severe mental illness or a as an individual with a developmental disability. [REDACTED] stated this was based on the Appellant's functional abilities he has in terms of self-care, learning, mobility, and the

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capacity he has for independent living, she did not find he was eligible for services at the time of her assessment.

acknowledged she met with the Appellant and his mother/guardian for a one hour assessment. addressed the Appellant's functional abilities and noted there were also some limitations due to his traumatic brain injury. noted Appellant was able to graduate high school following his accident in with the support of a full-time aide. stated Appellant has the capacity for independent living. He has some structure throughout his day and is able to take care of his own activities of daily living. stated the Appellant discussed that he is able to cook, likes to grill outside, and is able to do his own laundry. stated he does have the ability to work on the family farm. further stated the Appellant does have expressive and congruent language, being able to communicate in that manner.

On cross examination, stated the Appellant's disability was the result of a TBI that he suffered in when he was years old. stated in her opinion the Appellant has the capacity to improve, and the brain can continue to grow and develop. acknowledged she met with the Appellant and his mother for a one hour assessment. She stated her assessment was based on a clinical interview with the Appellant and his mother. She further stated her testimony was based on her assessment.

noted she had spoken to the Appellant's mother on the phone prior to the assessment, and she had consulted with her supervisor and about her assessment. stated she did not speak with Appellant's treating psychiatrist, but she did obtain medical records from him to review in connection with her assessment. stated she also did not speak with, another psychiatrist that had treated the Appellant, but did obtain medical records from him for a record review. stated she read Appellant's doctor's assessments, but it was not her role to determine whether she agreed with their opinions regarding the Appellant, or to state whether they are right or wrong.

acknowledged that she was aware had found the Appellant disabled according to their means for determining disability, and that on had found the Appellant was a person with a developmental disability requiring guardianship services. stated the judge's determination in August does not change the assessment she made in. stated that it was her responsibility to determine eligibility for CMH services in the Access Department. She further stated the Appellant was not found to be eligible for CMH services because she did not believe he met the necessary criteria of having substantial functional limitations in three or more of seven life areas. (Testimony and Exhibit B).

, M.D., testified that he graduated from Medical School in stated has worked with individuals with developmental disabilities since stated he is a psychiatrist and is currently the

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Medical Director for [REDACTED] CMH. He has served in this capacity full-time for the past three years. [REDACTED] stated he has only done two assessments for clinical eligibility for CMH services in Ionia County, and only gets involved in these matters when there is a request for a second opinion. [REDACTED] stated that it was his professional opinion that the Appellant was not eligible for CMH services as an individual with a developmental disability.

[REDACTED] stated his review of the materials show Appellant had issues before the TBI, and there are some complications as the result of his TBI that can be helped with therapeutic intervention. [REDACTED] stated, however, that he did not believe the Appellant met the State's definition of developmental disability. [REDACTED] admitted that initially when he made his determination he did not use the seven items listed in the Mental Health Code. He stated that since then he has compared what he did to the Mental Health Code, and has not changed his position.

[REDACTED] stated in doing his evaluation of the Appellant, which is dated [REDACTED], he was impressed with the Appellant's abilities. [REDACTED] stated he let the Appellant teach him about farming, milking, and cattle health issues. [REDACTED] stated he was impressed with the Appellant's acuity and what he knew, and the doctor learned some things. [REDACTED] stated Appellant displayed a number of behavioral issues that had to do with a number of stressors in the Appellant's life, not just the TBI.

On cross examination [REDACTED] stated he met with the Appellant for about an hour on [REDACTED] to do his evaluation. [REDACTED] utilized a standard mental status examination, a standard psychiatric tool used for an initial evaluation of an individual. [REDACTED] stated that although he did not initially follow the seven items set forth in the statute in doing his evaluation, he believes the standard psychiatric evaluation used with the Appellant does cover the seven items set forth in the statute.

[REDACTED] stated he had not talked to the Appellant's doctors and had not seen any of their records until the weekend prior to the hearing. He stated his evaluation was based on his meeting with the Appellant and the Appellant's parent. [REDACTED] stated he did not support [REDACTED] diagnosis of bipolar disease, there are mood problems, but he did not see the criteria for bipolar disease. [REDACTED] stated the Appellant was much more astute and competent than he was defined in [REDACTED] letter. [REDACTED] also stated he recently learned the Appellant's mother was appointed guardian of Appellant, based on the probate judge's finding that he was an individual with a developmental disability. [REDACTED] stated he did not agree with the judge's assessment that the Appellant has a developmental disability. [REDACTED] stated he did not know what the judge based his decision on, and that the judge probably saw the Appellant for less time than he did before making his decision.

This Administrative Law Judge does not have jurisdiction to order the CMH to provide Medicaid covered services to a beneficiary that the CMH did not find to be eligible for those services. This Administrative Law Judge determines that the Appellant is not eligible for

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CMH Medicaid covered services for the reasons discussed below.

The definition section contained in the Mental Health Code, specifically MCL 330.1100a(21), defines "Developmental disability" as follows:

"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:
    - b. Self-care.
    - c. Receptive and expressive language.
    - d. Learning.
    - e. Mobility.
    - f. Self-direction.
    - g. Capacity for independent living.
    - h. Economic self-sufficiency.
      - i. 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.
- i. 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.

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The assessments done by [REDACTED] on [REDACTED] and [REDACTED] on [REDACTED], demonstrate that based on the information they had at the time of their assessments, the Appellant's functional abilities in the seven areas of major life activity did not establish that he met the necessary criteria to be considered as a person with a developmental disability. (Exhibits B, C, F and testimony). Their assessments showed the Appellant does not have a substantial functional impairment in the area of self-care. Appellant is able to take care of his own personal hygiene; shaving on a regular basis; doing his own laundry; and he is able to shower, toilet, and take care of his other personal care needs without assistance.

Their assessments showed the Appellant does not have a substantial functional impairment in the area of receptive and expressive language skills. He is capable of understanding and responding to questions put to him. At times his responses may be a bit delayed, but for the most part they are logical and coherent. He also maintains adequate eye contact when talking with others.

Their assessments showed the Appellant has a capacity for learning. He was able to return to high school following his accident and graduate with the assistance of a full-time aide. Appellant's remote and recent memory is intact. Appellant has demonstrated the ability to alter his behaviors while outside of the family home. Appellant has displayed an ability to appropriately interact with the CMH evaluators, but at times will direct rage and anger towards family members.

Their assessments showed the Appellant does not have a substantial functional impairment in the area of mobility. The Appellant is able to ambulate on his own and does not need any assistance in this activity.

Their assessments showed the Appellant does exhibit a substantial functional impairment in self direction. Appellant's mother advised the Appellant cannot typically be left alone during his daily routine due to impulsivity and distractibility. He also shows poor judgment that can put him at risk.

Their assessments showed the Appellant does not have a substantial functional impairment in the area of capacity for independent living. Appellant has demonstrated he has the ability to learn and to correct his behaviors in response to skilled supports. He has demonstrated an ability cook, do laundry, care for his own personal needs, and do work on the family farm. With further advancement and support Appellant can become independent.

Their assessments showed the Appellant does not have a substantial functional impairment in the area of capacity for economic self-sufficiency. While the Appellant's mother is currently his representative payee managing his finances, Appellant's demonstrated ability to learn shows that he has the capability of becoming self-sufficient in this area with the preparation and support of others.

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Appellant's mother and guardian testified that the Appellant lives with the family. She stated on a typical day Appellant will get up on his own, but sometimes he needs prompting to get out of bed. Appellant's mother stated he needs to be reminded to take his morning medications, and to have something to eat in the morning along with his medication to avoid an upset stomach. She stated usually the Appellant spends the rest of the day on the farm with his father. Appellant's mother indicated the Appellant exaggerates about what he does at the farm, and what he does now is not the same as what he did before the accident.

Appellant's mother indicated they spend a lot of their day giving in to the Appellant to keep him on an even keel so he won't go into blow ups or rages. She stated he was an average student before the accident, and after the accident it took him about one and half years to complete two and a half credit hours and graduate with the help of a full-time aide and he had lots of accommodations. Appellant's mother stated they got him enrolled in the [REDACTED] dairy tech program, he took one or two classes each semester, but he was unable to pass any of his classes despite having extra testing time and a private testing room.

Appellant's mother acknowledged she was appointed as Appellant's guardian in [REDACTED] when Appellant was determined to be a legally incapacitated person. She further acknowledged that on [REDACTED] the guardianship was converted to one under the section covering developmentally disabled persons. Appellant's mother indicated she has to manage the Appellant's money and his social security for him with his father's help. She stated she has to prompt Appellant to bring his laundry down, but he can start a load of laundry, but can't fold the clothes. She also stated she has to take care of the Appellant's health care appointments and drives him to his appointments.

Appellant's mother indicated the Appellant doesn't have a driver's license, but he does drive farm equipment and a gator back and forth to the farm illegally. She indicated they allow him to do this to keep him from going into a rage. Appellant's mother also referred back to incidents which apparently occurred in [REDACTED] when he became violent with his father and with one of his co-workers [REDACTED]. Appellant's mother stated Appellant needs special rehabilitative services, and does not believe he currently can live independently.

On cross examination, Appellant's mother did state that she believed with specialized treatment the Appellant could live independently in the future. She acknowledged the Appellant did not need assistance with his personal care and does not have mobility issues. Appellant's mother acknowledged the Appellant can participate in some community events and can be very social, but said at times he does act inappropriately towards women. Appellant's mother also acknowledged that the Appellant does as much as he can on the farm and can do some things without supervision, such as hauling manure. For other jobs, he requires supervision because he becomes distracted.

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Appellant was also called to testify on his own behalf. Appellant indicated he used to have a job, but doesn't have one now because he can't drive. He stated his mom thinks she controls his money, but he buys cows, and said he owns [REDACTED] cows. Appellant said he believes he could take over the family farm. He also admitted that he hit his father in the past and also had struck two of his co-workers. He stated he did not remember threatening to kill his doctor or going to the psychiatric hospital in [REDACTED] t.

On cross exam the Appellant stated he showers at night. In the morning, he goes to the bathroom, puts on his uniform, eats breakfast, takes his medications, gets on a gator and goes to the farm. Appellant stated he can brush his own teeth and shave. He stated he can cook pasta and cook foods on the grill such as steaks, chicken and sausages. Appellant stated he wants to own his own farm. He cares for ill cows, when their milk goes down. Appellant stated you check their temperature and test their urine in order to tell if they are sick. Appellant also indicated that you might treat the cows with calcium or propylene glycol.

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 he was not. The information available to the CMH at the time it determined he was not eligible for services showed he did not meet the substantial functional limitations requirement to be identified as a person with a developmental disability.

The testimony and evidence presented at the administrative hearing on the Appellant's behalf does not demonstrate that the CMH acted improperly when it determined that the Appellant did not qualify for CMH services as an individual with a developmental disability. A comparison of the testimony of the Appellant and his mother during the hearing with the information provided to CMH at the time of Appellant's assessment shows that the same information was available to CMH at the time it determined that the Appellant was not eligible for CMH services.

[REDACTED] letter dated [REDACTED] was considered by the [REDACTED] but it only gives [REDACTED] conclusions as to the Appellant's condition and does not give any data, test results or the underlying factual support for his conclusions. In any event, [REDACTED] indicated that after his recent review he disagreed with [REDACTED] opinion and gave his reasons why he did not agree with [REDACTED] conclusions. Also the probate judge's determination that the Appellant was an individual with a developmental disability came about four months after the assessments were done by CMH and about two months after the Appellant's request for a hearing was first filed. [REDACTED] candidly stated he did not agree with the judge's determination, and he had no knowledge what the judge had relied upon to make his decision. In any event, the judge's determination could have had no bearing on CMH's eligibility decision since it came about four months after CMH had already made its decision. In short, the Appellant has not met his burden of showing that the information provided to the [REDACTED] and reviewed by CMH's Medical Director demonstrated that he had a substantial functional limitation in three or more areas of major life activity.

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Accordingly, Appellant did 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 CMH acted properly when it determined that the Appellant did not meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH as a developmentally disabled person.

**IT IS THEREFORE ORDERED THAT:**

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

*William D Bond*

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William D. Bond  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc:

[REDACTED]

**\*\*\* 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.

