

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. 2013-42273 CMH
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for a hearing filed on behalf of the minor Appellant/Petitioner.

After due notice, a telephone hearing was held ██████████. ██████████, Appellant's father, appeared and testified on Appellant's behalf. ██████████, Corporation Counsel for ██████████ County, represented the ██████████ County Community Mental Health Authority (CMH or Department). ██████████, Licensed Social Worker, and ██████████, Fair Hearing Officer, appeared as witnesses for the Department.

Both parties submitted evidence prior to the hearing, but Appellant's representative failed to provide a copy of his proposed exhibits to Respondent before or at the hearing. The record was therefore left upon until ██████████ so that Respondent could file an objections or response to Appellant's proposed exhibits. Respondent filed a response, but no objection, and Appellant's evidence is admitted as Petitioner's Exhibit 2.

ISSUE

Did 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. Appellant is a ██████ year-old female who has been diagnosed with Attention-Deficit/Hyperactivity Disorder Predominately Inattentive Type; Mood Disorder NOS; parent-child relation problems; and borderline intellectual functioning. (Respondent's Exhibit 1, pages 4, 7).
2. 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.

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3. Appellant received services through the CMH in the past, but her they were terminated on [REDACTED] after it was determined that she was no longer eligible for services. (Respondent's Exhibit 1, pages 4-5).
4. Appellant did not appeal that termination. (Testimony of Appellant's representative).
5. However, Appellant's representative did subsequently request that Appellant's services be reinstated. (Testimony of Appellant's representative; Respondent's Exhibit 1, page 7).
6. On [REDACTED], [REDACTED], a Licensed Master Social Worker, assessed Appellant for services. (Respondent's Exhibit 1, pages 7-10).
7. Based on that assessment, the CMH determined that Appellant was not eligible for services through the CMH. (Testimony of [REDACTED]).
8. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant. (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). 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

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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 (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.

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, pages 3.]

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Here, the issue is whether Appellant has a serious emotional disturbance and whether her needs exceed the benefits of her MHP.

“Serious emotional disturbance” is defined in the Mental Health Code, at MCL 330.1100d(2) 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.
- b. A developmental disorder.
- c. “V” codes in the diagnostic and statistical manual of mental disorders.

In making the determination of whether Appellant has a serious emotional disturbance (SED), Respondent also looks to the Michigan Department of Community Health (MDCH) Technical Requirement for SED Children, as outlined in the MDCH/CMHSP Mental Health Supports and Services Contract.¹ That contract outlines three conditions that must be met in order for a child/ adolescent to be considered severely emotionally disturbed:

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

¹The Contract itself is available online and the relevant portion admitted as Respondent's Exhibit 1, pages 1-3.

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

Definition of Child with Serious Emotional Disturbance 7 through 17 Years

The definition of SED for children 7 through 17 years delineated below is based on the Mental Health Code, Section 330.1100d. In addition, extensive reviews and examinations of Child and Adolescent Functional Assessment Scale (CAFAS) data submitted by CMHSPs for the children currently served were undertaken to establish functioning criteria consistent with the Michigan Mental Health Code definition of serious emotional disturbance.² The parameters delineated below do not preclude the diagnosis of and the provision of services to an adult beneficiary who is a parent and who has diagnosis within the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or International Classification of Diseases (ICD) that results in a care-giving environment that places the child at-risk for serious emotional disturbance.

The following is the criteria for determining when a child 7 through 17 years is considered to have a serious emotional disturbance. All of the dimensions must be considered when determining whether a child is eligible for mental health services and supports as a child with serious emotional disturbance. The child shall meet each of the following:

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

² The recommendations for the CAFAS scores as detailed under the functioning dimension described in this document would capture about 84.2% of the children currently being served by CMHSPs.

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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
- 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.

In this case, [REDACTED] performed the relevant screening and she holds both a Master's Degree in Social Work from [REDACTED] University and an LMSW license in the State of Michigan. [REDACTED] also testified that she has worked at the CMH for [REDACTED] years and at the Access Center specifically for [REDACTED] years. She further testified that she is a certified CAFAS rater and Respondent's evidence indicates that [REDACTED]' certification was renewed for another two years on [REDACTED]. (Respondent's Exhibit 1, page 6; Testimony of [REDACTED]).

Two assessments have been conducted with respect to Appellant in the past year. As discussed above, Appellant's services were assessed and terminated in [REDACTED] after it was determined that she was no longer eligible for services. (Respondent's Exhibit 1, pages 4-5). That determination of services was not appealed. (Testimony of Appellant's representative).

Appellant's representative did subsequently reapply for services on Appellant's behalf and another CAFAS assessment was made. According to [REDACTED], she performed that assessment on [REDACTED] and determined that Appellant did not meet the criteria for CMH services at the time because the CAFAS assessment only indicated a total score of 40 for Appellant (with a score of 20 on the Home subscale; 10 on the Behavior Toward Others subscale; and 10 on the Moods" subscale). (Respondent's Exhibit 1, page 9; Testimony of [REDACTED]).

Specifically, Appellant was scored 20 on the Home subscale and determined to have a moderate impairment in that area based on reports that she exhibits persistence disobedience and noncompliance with reasonable rules; fights; and is defiant. Appellant was not labeled severe and did not score higher because she has not been

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placed outside of the home. (Respondent's Exhibit 1, pages 9-13; Testimony of [REDACTED]).

Appellant scored a 10 on the Behavior subscale and identified as having a mild impairment in that area because of reports that she annoys other people on purpose; is mean or impulsive at time; and engages in age-inappropriate behavior. (Respondent's Exhibit 1, pages 9-13; Testimony of [REDACTED]).

Appellant scored a 10 in the Moods subscale and identified as having a mild impairment in that area based on reports that is she moody and emotional. However, she was not scored higher as she does not have anxiety or fears out of proportion to her situation. (Respondent's Exhibit 1, pages 9-13; Testimony of [REDACTED]).

Appellant scored a zero in all other subscales: School/Work; Community; Self-Harmful Behavior; Substance Abuse; and Thinking. Those findings were based on reports that, while Appellant has special educational needs being met by the school; she has not been expelled, suspended or disciplined at school; Appellant has not had any trouble with law enforcement or had a negative impact on the community; Appellant does not engage in self-harmful behaviors; Appellant does not engage in substance abuse; and Appellant's thoughts, as reflected by communication, are not disordered or eccentric. (Respondent's Exhibit 1, pages 9-13; Testimony of [REDACTED]).

In response, Appellant's representative did not dispute [REDACTED]' specific findings. He did offer his own testimony relating to the difficulties he is having with Appellant, but that testimony is reflected in the CAFAS score. Appellant's representative also offered evidence and testimony discussing Appellant's hygiene problems, both at home and at school, but those problems are not part of the assessment on their own and, to the extent they reflect Appellant's difficult behaviors and disobedience, they are likewise reflected in the CAFAS score. (Testimony of Appellant).

Appellant's representative also submitted a letter from Appellant's primary care physician, Dr. [REDACTED], indicating that:

[REDACTED] adoptive mother ([REDACTED]) suffers from severe Alzheimer's. [REDACTED] has taken on the overwhelming task of caring for his wife and two adopted daughters who have special needs. Due to her special needs and current family circumstances, it is advisable that [REDACTED] continue to seek mental health services. As a family Practice physician, I am not comfortable monitoring or adjusting [REDACTED] medications. She would be better served at [REDACTED] County Community Mental Health or [REDACTED]. [Petitioner's Exhibit 2, page 6.]

However, while Appellant's living arrangement may be difficult and stressful on Appellant's father, that situation is not relevant to the CAFAS assessment or this decision beyond the effect it has on Appellant's behaviors. Moreover, as noted by the

