

**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. 2013-60206 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 a request for a hearing filed on behalf of the minor Appellant/Petitioner.

After due notice, a hearing was held on ██████████. ██████████ appeared and testified on Appellant's behalf. ██████████, Appellant's mother, also testified as a witness for Appellant. Appellant was present during the hearing, but did not participate. ██████████, Assistant Corporation Counsel, represented the ██████████ County Community Mental Health (CMH). ██████████, Director of the Access center, testified as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for a speech/hearing evaluation?

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 male who has been diagnosed with Autistic disorder and mild mental retardation. (Respondent's Exhibit A, pages 10, 27).
2. The CMH is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in its service area.
3. Appellant has been receiving services through the CMH since ██████████. (Testimony of ██████████).
4. In ██████████, Appellant's services included supports coordination, community living supports, respite services, and psychiatric services. (Respondent's

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Exhibit A, page 18).

5. Appellant also received speech therapy through the CMH until approximately [REDACTED]. (Respondent's Exhibit A, pages 32, 69-70).
6. Appellant's mother requested that the speech therapy be continued from [REDACTED] through [REDACTED]. (Respondent's Exhibit A, pages 69-70).
7. That request was denied by the CMH on the basis that the services were not medically necessary. (Respondent's Exhibit A, pages 69-70).
8. Appellant appealed that denial, but the CMH's decision was affirmed in an [REDACTED] Decision and Order by this Administrative Law Judge. (Respondent's Exhibit A, pages 69-70, 74).
9. On or about [REDACTED], Appellant's mother requested a speech and hearing evaluation for Appellant. (Respondent's Exhibit A, page 5).
10. On [REDACTED], the CMH sent a written notice to Appellant notifying him that the request for a speech and hearing evaluation was being denied as the evaluation was not medically necessary. (Respondent's Exhibit A, page 5).
11. On or about [REDACTED], Appellant pursued a local dispute resolution within the CMH. (Respondent's Exhibit A, page 32).
12. In a decision dated [REDACTED], the local dispute hearing officer issued a decision upholding the CMH's denial. (Respondent's Exhibit A, pages 32-34).
13. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing with respect to the denial filed on behalf of Appellant. (Respondent's Exhibit A, page 7).

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

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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

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 U.S.C. § 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 MDCH operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

The CMH contracts with the MDCH to provide services under the waiver pursuant to its contract obligations with the Department.

Among the services that the CMH may provide is speech therapy (ST). With respect to ST, the applicable version of the Medicaid Provider Manual (MPM) states:

3.22 SPEECH, HEARING, AND LANGUAGE

Evaluation

Activities provided by a speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.

Therapy

Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).

Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.

Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a certified speech-language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, licensed occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services may be provided by a speech-language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license) . . .

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Mental Health/Substance Abuse Chapter, pages 20-21

Here, as discussed above, Appellant was previously receiving ST through the CMH until a reauthorization request for such therapy was denied on the basis that the ST was not medically necessary. Appellant appealed that decision and, in an [REDACTED] Decision and Order, this Administrative Law Judge affirmed the CMH's denial. Specifically, this Administrative Law Judge found that Appellant had failed to meet his burden of proving by a preponderance of the evidence that the requested ST was medically necessary given the ST Appellant was already receiving through his school.

Since that decision, Appellant has continued to receive ST through his school. Appellant's mother testified that she has recently learned that the ST Appellant receives in school is different from the services described in the most recent IEP. She also testified that the ST in school is insufficient to meet Appellant's needs. According to her, Appellant needs the one-on-one ST he was previously receiving through the CMH.

While Appellant's mother may have new information regarding what services the school is providing, this Administrative Law Judge is limited to reviewing the CMH's decision in light of the information it had at the time it made that decision. In this case, that information supports the denial of the request for a speech evaluation.

It is undisputed that Appellant is receiving ST through his school and, as described in his most recent IEP, it appears that the school's services were intended to meet all of Appellant's needs. (Respondent's Exhibit A, pages 39-67). For example, the IEP contains appropriate goals and areas to work on (Respondent's Exhibit A, pages 41-44, 50-51) and there is nothing in that IEP regarding Appellant needing additional ST services or any attempt to coordinate the school's services with other programs. Additionally, the IEP specifically states that an extended school year not needed (Respondent's Exhibit A, page 61)

Appellant's representative and witness also note that they are only seeking an evaluation of Appellant's needs. According to them, asking for an evaluation is not too much and the CMH cannot know if any additional ST is medically necessary without such an evaluation. However, as argued by the CMH, such an evaluation would only show a need for ST, which is undisputed, and would not address whether ST in addition to what is provided in the school is necessary or whether the effects of speech therapy would be maintainable. See MPM, April 1, 2013 version, Mental Health/Substance Abuse Chapter, page 20.

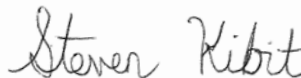
Given the ST provided by the school, Appellant has failed to meet his burden of proving by a preponderance of the evidence that a speech evaluation through the CMH is medically necessary and the CMH's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that LifeWays properly denied Appellant's request for a speech/hearing evaluation.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.



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

[REDACTED]
Date Signed: 10/10/2013

Date Mailed: 10/10/2013

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 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.