

**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. 2013-69746 CMH

██████████

██████████

██████████

Appellant

\_\_\_\_\_ /

**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 ██████████. Appellant appeared and testified on her own behalf. ██████████, Appellant's therapist, and ██████████, Appellant's mother, also testified on Appellant's behalf. ██████████, Manager of Due Process, represented Respondent ██████████, formally known as ██████████ (CMH). ██████████ a psychologist from the Utilization Management Department at GHS, testified as a witness for Respondent.

**ISSUE**

Did ██████████ properly determine that the Appellant was not eligible for specialty mental health services through ██████████?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. ██████████ is under contract with the Michigan Department of Community Health (MDCH) to provide specified Medicaid-covered services to people who reside in the its service area and meet the criteria for such services.
2. Appellant is a ██████████ year-old Medicaid beneficiary who has been diagnosed with adjustment disorder with mixed anxiety and depression. Appellant also reports suffering from post-traumatic stress disorder (PTSD) and

██████████  
**Docket No. 2013-69746 CMH**  
**Decision and Order**

generalized anxiety disorder (GAD) while ██████ also recorded Appellant as reporting a diagnosis of alcohol abuse, which Appellant now denies. (Respondent's Exhibit A, pages 4, 10, 17).

3. Appellant is a member of the population required to enroll in a Medicaid Managed Health Plan (MHP) and, through her MHP, she has been receiving outpatient therapy with ██████ as her therapist. (Testimony of Appellant; Testimony of ██████).
4. On ████████████████████, Appellant requested Dialectical behavior therapy (DBT) and case management services through ██████ on the recommendation of her therapist at the MHP. (Respondent's Exhibits 4-17; Testimony of ██████).
5. Appellant had previously applied and been rejected for such services in ████████████████████. (Respondent's Exhibit A, pages 30-48).
6. On ████████████████████ sent Appellant written notice that the new request for services was also being denied. (Respondent's Exhibit A, pages 1-3).
7. Specifically, the denial stated: "You do not meet the eligibility criteria for a person with a severe and persistent mental illness and/or developmentally disabled individual and in need of ██████ specialty services and supports." (Respondent's Exhibit A, page 1).
8. On ████████████████████ the Michigan Administrative Hearing System (MAHS) received a request for hearing regarding the ████████████████████ (Petitioner's Exhibit 1, pages 1-4).

**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

**Docket No. 2013-69746 CMH**  
**Decision and Order**

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...

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 section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

The [REDACTED] contracts with the MDCH to provide services pursuant to its contract obligations with the Department, but eligibility for those services is still set by Department policy.

**Docket No. 2013-69746 CMH**  
**Decision and Order**

Specifically, the Medicaid Provider Manual (MPM) articulates the relevant policy regarding eligibility for mental health services and a beneficiary must meet those eligibility requirements in order to receive 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.

The following table has been developed to assist health plans and PIHPs in making coverage determination decisions related to outpatient care for MHP beneficiaries. Generally, as the beneficiary's psychiatric signs, symptoms and degree/extent of functional impairment increase in severity, complexity and/or duration, the more likely it becomes that the beneficiary will require specialized services and supports available through the PIHP/CMHSP. For all coverage determination decisions, it is presumed that the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders published by the American Psychiatric Association.

**In general, MHPs are responsible for outpatient mental health in the following situations:**

- The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal clinical (self/other harm risk) instability.
- The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have

**Docket No. 2013-69746 CMH**  
**Decision and Order**

substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.

**In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:**

- The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to perform daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills).
- The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse.
- The beneficiary has been treated by the MHP for mild/moderate symptomatology and temporary or limited functional impairments and has exhausted the 20-visit maximum for the calendar year. (Exhausting the 20-visit maximum is not necessary prior to referring complex cases to PIHP/CMHSP.) The MHP's mental health consultant and the PIHP/CMHSP medical director concur that additional treatment through the PIHP/CMHSP is medically necessary and can reasonably be expected to achieve the intended purpose (i.e., improvement in the beneficiary's condition) of the additional treatment.

The "mental health conditions" listed in the table above are descriptions and are intended only as a general guide for

**Docket No. 2013-69746 CMH**  
**Decision and Order**

PIHPs and MHPs in coverage determination decisions. These categories do not constitute unconditional boundaries and hence cannot provide an absolute demarcation between health plan and PIHP responsibilities for each individual beneficiary. Cases will occur which will require collaboration and negotiated understanding between the medical directors from the MHP and the PIHP. The critical clinical decision-making processes should be based on the written local agreement, common sense and the best treatment path for the beneficiary.

\* \* \*

Medicaid-covered services and supports selected jointly by the beneficiary, clinician, and others during the person-centered planning process and identified in the plan of service must meet the medical necessity criteria contained in this chapter, be appropriate to the individual's needs, and meet the standards herein. A person-centered planning process that meets the standards of the Person-centered Planning Practice Guideline attached to the MDCH/PIHP contract must be used in selecting services and supports with mental health program beneficiaries who have mental illness, serious emotional disturbance, or developmental disabilities.

*MPM, July 1, 2013 version*  
*Mental Health/Substance Abuse Chapter*  
*pages 3-4*

The state of Michigan's Mental Health Code defines mental illness and serious emotional disturbance as follows:

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:

**Docket No. 2013-69746 CMH**  
**Decision and Order**

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. "V" codes in the diagnostic and statistical manual of mental disorders.

3. "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within 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 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. A "V" code in the diagnostic and statistical manual of mental disorders.

*MCL 330.1100d*

Additionally, with respect to developmental disabilities, the Mental Health Code also provides:

(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.

██████████  
**Docket No. 2013-69746 CMH**  
**Decision and Order**

- 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.
    - 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.
- b. 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.

*MCL 330.1100a(25)*

Here, pursuant to the MPM and Mental Health Code, ████████ denied Appellant's request for services on the basis that she is not a Medicaid beneficiary with a serious mental illness, serious emotional disturbance or developmental disability and whose needs exceed the benefits of the MHP she is enrolled in.

Appellant challenges that decision on appeal and bears the burden of proving by a preponderance of the evidence that ████████ erred in making the eligibility determination. For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof.

It is undisputed in this case that Appellant does not have a developmental disability as that term is defined by the Mental Health Code. See MCL 330.1100a(21). Appellant is not a minor and also does not meet the criteria for having a serious emotional disturbance. See MCL 330.1100d(2).

Additionally, while Appellant asserts that she has a serious mental illness; ████████ credibly testified that Appellant only reported suffering from mild to moderate symptoms

██████████  
**Docket No. 2013-69746 CMH**  
**Decision and Order**

during the screening. (Testimony of ██████████). There was also no evidence of any diagnosis resulting in a functional impairment that substantially interferes with or limits one or more major life activities. (Respondent's Exhibits 4-17; Testimony of Appellant; Testimony of ██████████).

Appellant's therapist testified that, in addition to the information conveyed by Appellant during the intake, Appellant also suffers from borderline personality disorder; severe depression; and chronic fatigue syndrome. Moreover, she further testified that Appellant's conditions are leaving Appellant isolated and unable to work or parent. (Testimony of ██████████. However, the therapist also acknowledged that Appellant has never been formally diagnosed with such conditions, even though Appellant and the therapist could have pursued having a psychiatrist at the MHP do so. (Testimony of ██████████. Moreover, Appellant further testified that she never reported such conditions or any effects of such conditions while applying for services. (Testimony of Appellant). This Administrative Law Judge is limited to reviewing the decision denying services in light of the information available at the time ██████████ made that decision. Therefore, any new or additional information is immaterial to this case and would have to be the subject of a new request for services.

Moreover, whatever the exact nature of her conditions, Appellant also failed to demonstrate that her mental health needs exceed the benefits provided by her MHP. The MPM provides that a beneficiary is only eligible for specialty mental health services and supports when her needs exceed the MHP benefits and that such a need must be documented in the individual's clinical record. See MPM, July 1, 2013 version, Mental Health/Substance Abuse Chapter, page 3. Moreover, even with mild or moderate symptoms, Appellant could potentially receive services through ██████████ if she had exhausted the ██████████ visit maximum for the calendar year through the MHP. See MPM, July 1, 2013 version, Mental Health/Substance Abuse Chapter, page 3. In this case, however, ██████████ expressly testified that, given the symptoms Appellant at the time of the screening, there was no evidence that Appellant's mental health needs cannot be met through the MHP. (Testimony of ██████████. Similarly, neither Appellant nor her therapist could testify that Appellant had even exceeded the number of outpatient therapy visits covered by the MHP. (Testimony of Appellant; Testimony of ██████████).

As discussed above, Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred by finding that she was ineligible. Given the above evidence and record in this case, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof and that the denial of her request for services must be affirmed. To the extent Appellant has new or additional information to provide, she can always reapply for services.

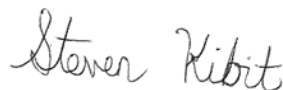
**Docket No. 2013-69746 CMH  
Decision and Order**

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED] properly decided that Appellant does not meet the criteria for specialty mental health services through [REDACTED].

**IT IS THEREFORE ORDERED** that:

The Respondent's decision denying services is **AFFIRMED**.



---

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

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.