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:

[redacted] Docket No. 14-013983 CMH

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted], Appellant's mother, appeared on Appellant's behalf. [redacted], Behavioral Health Clinician, Adolescent Unit [redacted] Case Manager, [redacted], and [redacted], Therapist, [redacted] appeared as witnesses on the Appellant's behalf.

[redacted], Assistant Corporation Counsel, appeared on behalf of [redacted] Community Mental Health (CMH), representing the Department. [redacted], Director [redacted] appeared as a witness for the Department.

ISSUE

Did the CMH properly deny the Appellant's request for children's residential placement?

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 [redacted]-year-old Medicaid beneficiary, DOB: [redacted]. (Exhibit A, pp. 1, 9, 17 and testimony).

2. On [redacted], the [redacted] was contacted and a request for children's residential placement was made for the Appellant. Appellant is diagnosed with a serious emotional disturbance either schizophrenia paranoid

type or psychotic disorder – NOS, mild mental retardation, and diabetes. The State also has approved the Appellant for the Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW), which provides for greater intensity and coordination of services in the community. (Exhibit A, pp. 1, 2, 17, 31 and testimony).

3. CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

4. On [redacted] sent an Adequate Action Notice to the Appellant's mother notifying Appellant that his request for children's residential placement was denied effective [redacted] because the requested service is not a Medicaid covered service. The notice included rights to a Medicaid fair hearing. (Exhibit A, p. 5).

5. MAHS received Appellant's request for a hearing on [redacted]. (Exhibit A, p. 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 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*].

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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. *See 42 CFR 440.230.*

[redacted] Director Access Center stated the Appellant is diagnosed with either schizophrenia paranoid type or psychotic disorder – NOS, mild mental retardation, and diabetes. [redacted] stated the Appellant's diagnosis is of a serious emotional disturbance, rather than a developmental disability. [redacted] stated that residential placement is not a Medicaid covered service under the Medicaid Provider Manual. (See Section 2.3 on Location of Service quoted below). [redacted] stated there are services in the community, which if medically necessary, that can be provided for the Appellant in this case, such as, in-patient psychiatric care, crisis stabilization, and partial hospitalization services.

[redacted] also noted that the State has approved the Appellant for the Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW), which provides for greater intensity and coordination of services in the community, or in the least restrictive setting possible according to the Appellant's needs. The Respondent's exhibit establishes that on [redacted], [redacted] sent an Adequate Action Notice to the Appellant's mother notifying Appellant that the request for children's residential placement was denied effective [redacted] because the requested service is not a Medicaid covered service.

The *Medicaid Provider Manual*, *Mental Health and Substance Abuse Chapter*, October 1, 2014, *Section 2.3* provides:

2.3 LOCATION OF SERVICE

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- Nursing facility mental health monitoring;
- Psychiatric evaluation;
- Psychological testing, and other assessments;
- Treatment planning;
- Individual therapy, including behavioral services;
- Crisis intervention; and
- Services provided at enrolled day program sites.

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

Medicaid does not cover services delivered in Institutions of Mental Disease (IMD) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is licensed as a "children's therapeutic group home" as defined in Section 722.11 Sec. 1(f) under Act No. 116 of the Public Acts of 1973, as amended, or it is for the purpose of transitioning a child out of an institutional setting (CCI). The following mental health services initiated by the PIHP (the case needs to be open to the CMHSP/PIHP) may be provided within the designated timeframes:

- Assessment of a child's needs for the purpose of determining the community based services necessary to transition the child out of a CCI. This should occur up to 60 days prior to the anticipated discharge from a CCI.
- Wraparound planning or case management. This should occur up to 60 days prior to discharge from a CCI.

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities). (Emphasis added). **[***Medicaid Provider Manual, Mental Health and Substance Abuse, Program Requirements Section,* October 1, 2014, pp. 9-10].

[redacted], Behavioral Health Clinician with the Adolescent Unit at [redacted] testified the Appellant had been in their facility for over [redacted] days off and on since [redacted] She said they have seen minimal progress with the Appellant. [redacted] said their facility is a short-term crisis stabilization facility. She said the Appellant has been on multiple medication trials that have proven to be ineffective. [redacted] said that [redacted] can no longer provide the care that the Appellant needs because they are a short-term facility.

[redacted], Case Manager with the J[redacted] In-Home Program, testified they have been working with the Appellant for about [redacted] months and he has met with the Appellant primarily at the hospital. [redacted] said the primary concerns of the family and the [redacted] r revolve around safety issues. He said Appellant's mother is concerned with Appellant constantly running away and his psychotic episodes believing people are out to get him. [redacted] said there is a concern of an overall lack of safety at home and in the community.

[redacted], a therapist with the In-Home Program at the [redacted] testified they have been working with the Appellant since [redacted] She said she has only seen the Appellant [redacted] times in the home, since he has been in the hospital often at [redacted]. [redacted] said the Appellant is not necessarily appropriate for in-home services because he often is not lucid and goes in and out of psychotic episodes often. She said therapy with the Appellant would be minimal because he is often not reality based. [redacted] stated in her opinion in-home services would not be most effective for the Appellant at this time. She also noted that the safety issues are currently a big concern.

The Appellant bears the burden of proving by a preponderance of the evidence that he is eligible for a children's residential placement in accordance with the Code of Federal Regulations (CFR). Appellant has not met this burden to establish that he is eligible for such a placement. Based upon the clearly stated policy in the Medicaid Provider Manual, Medicaid does not provide for residential placement for a child who is diagnosed with a serious emotional disturbance rather than a developmental disability. Children's residential placement

is not a Medicaid covered services for children such as the Appellant. Accordingly, CMH was correct in denying Appellant's request for children's residential placement in this case. In conclusion, CMH's representative stated that they will have a discussion with the parties involved to determine what additional services are available in the community to better meet the Appellant's needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Appellant's request for children's residential placement.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/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.