

**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. 14-006896 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.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on Appellant's behalf. Appellant also appeared but did not testify. ██████████, Transition Coordinator, ██████████ Intermediate School District, appeared as a witness for Appellant.

Attorney ██████████ represented Respondent, Kalamazoo County Community Mental Health and Substance Abuse (CMH or Department). ██████████, LLP, CCDDP, Behavioral Health and Waiver Specialist, appeared as a witness for the CMH.

**ISSUE**

Did the Department properly deny Appellant's request for CMH services as a person with a Developmental Disability (DD)?

**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 ██████████ Medicaid beneficiary, born ██████████, who is diagnosed with Attention-Deficit Hyperactivity Disorder, Predominantly Inattentive Type; Learning Disorder NOS; Anxiety Disorder NOS; and Avoidant Personality Disorder. (Exhibit A, pp 1, 12, 29; Testimony)
2. At the time the decision in this matter was made, Appellant was living at home with his parents. (He has since moved into a General Adult Foster

Care Home). Appellant is able to complete all of his personal hygiene tasks independently, although he requires prompting to be effective and stay on task. Appellant is able to clean the house, wash dishes and mop the floor. Appellant is able to prepare his own meals. Appellant passed the written portion of the driver's license exam, but failed the driving portion. Appellant does have a moped license, but does not have a moped because his father thinks it is too dangerous. Appellant uses his bicycle for transportation. Appellant's IQ has been measured at between 67 and 90. (Exhibit A, p 15, 25, 43, 48; Testimony)

3. Appellant attends CTC (the post high school special education program) through Van Buren Intermediate School District. Appellant attended a transition program to work on improving his social skills before attending classes. Appellant also works 6-10 hours per week at a Shell gas station, where he stocks shelves, cleans floors and bathrooms, cleans the parking lot, and washes the gas pumps. (Exhibit A, p 18, 25; Testimony)
4. Appellant is his own payee for Social Security, although his parents assist him with his finances. Appellant does not have a guardian. (Exhibit A, pp 18, 25; Testimony)
5. Appellant struggles at times to get along with others, which affects his ability to train for and retain employment, likewise compromising his effectiveness in the community and sometimes at home, across various settings. Appellant sometimes misinterprets social cues and reacts emotionally to his own sometimes inaccurate assumptions about his surroundings and the motives of others. (Exhibit A, p 49; Testimony)
6. Appellant is nonviolent and presents no evidence of physical danger to himself, other people, or property. Appellant does, however, become frustrated easily, can be verbally abusive during arguments, and then ruminates over scenarios later. (Exhibit A, p 50; Testimony)
7. Appellant does not receive psychiatric services. His medications (Concerta and Celexa) are prescribed through his primary care doctor. Appellant does attend outpatient therapy. (Exhibit A, p 51; Testimony)
8. After turning 18 and aging out of services previously offered through CMH for children, Appellant's parents requested a Developmental Disability Assessment for continued services to assist Appellant with his transition to the community, housing and employment. (Exhibit A, pp 1, 11-13; Testimony)
9. On [REDACTED], CMH clinician [REDACTED], MA, LMSW, QIDP, completed an assessment and determined that Appellant was not eligible for services as a person with a Developmental Disability (DD) because he

did not have a substantial functional limitation in three or more areas of major life activities. (Exhibit A, pp 14-25; Testimony)

10. On ██████████, CMH sent Appellant an Action Notice informing him that he was not eligible for the services he requested. (Exhibit A, pp 26-28; Testimony)
11. After Appellant's parents requested a second opinion, CMH clinician ██████████, LPC, QIDP, conducted another assessment. ██████████ also concluded that Appellant was not eligible for services as a person with a Developmental Disability (DD) because he did not have a substantial functional limitation in three or more areas of major life activities. (Exhibit A, pp 32-43; Testimony)
12. On ██████████, CMH sent Appellant an Action Notice informing him that, after the second opinion, he was still determined to be not eligible for the services he requested. (Exhibit A, pp 44-46; Testimony)
13. On ██████████, the Michigan Administrative Hearing System received the hearing request filed on Appellant's behalf. (Exhibit 1)
14. In preparation for the hearing, CMH clinician Ellie Deleon, LLP, CCDPD, completed a utilization review of Appellant's request for services, reviewing all documents in Appellant's electronic medical record. ██████████ also concluded that Appellant was not eligible for services as a person with a Developmental Disability (DD) because he did not have a substantial functional limitation in three or more areas of major life activities. (Exhibit A, pp 47-54; Testimony)

### **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.

The applicable sections of the Medicaid Provider Manual (MPM) provide:

## **2.5 MEDICAL NECESSITY CRITERIA**

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

### **2.5.A. MEDICAL NECESSITY CRITERIA**

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

### **2.5.B. DETERMINATION CRITERIA**

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.
- Documented in the individual plan of service.

### **2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

### **2.5.D. PIHP DECISIONS**

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
  - deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - experimental or investigational in nature; or
  - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

The Medicaid Provider Manual also lays out the responsibilities of Medicaid Health Plans (MHP's) and CMH's:

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.

<p><b>In general, MHPs are responsible for outpatient mental health in the following situations:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> 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.</li><li><input type="checkbox"/> The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have</li></ul>	<p><b>In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> 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).</li><li><input type="checkbox"/> 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</li></ul>
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<p>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.</p>	<p>requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse.</p> <p><input type="checkbox"/> 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.</p>
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*Medicaid Provider Manual*  
*Mental Health & Substance Abuse Chapter*  
*April 1, 2014, p 3*

The CMH Representative indicated that the Michigan Mental Health Code definition of developmental disability was utilized by CMH to determine Appellant was not eligible for CMH services. That definition provides, in pertinent part:

- (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.
    - (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.

*MCL 30.1100a*

The CMH's Behavioral Health and Waiver Specialist reviewed the Utilization Review she completed for Appellant and testified that the document supported her conclusion that Appellant was not eligible for services as a person with a Developmental Disability (DD) because he did not have a substantial functional limitation in three or more areas of major life activities. The CMH's Behavioral Health and Waiver Specialist pointed out that Appellant has since moved to an AFC home, which should help with some of his behavioral problems and that he can get his outpatient therapy and medication paid for by his Medicaid HMO. The CMH's Behavioral Health and Waiver Specialist testified that CMH linked Appellant's family with employment and community support services, which need to be used prior to CMH services given that Medicaid is the payor of last resort. The CMH's Behavioral Health and Waiver Specialist concluded that Appellant was not eligible for CMH services because there exists other appropriate, efficacious, less-restrictive and cost effective services available that can meet Appellant's needs.

Appellant's mother testified that Appellant struggles far more with taking care of himself than the documentation in his file portrays. Appellant's mother indicated that Appellant needs prompts and reminders for everything that he does. Appellant's mother testified that Appellant has just started school and the family is already receiving calls regarding his behaviors. Appellant's mother indicated that Appellant only made it through high school because of the family's assistance and good relationship with school staff. Appellant's mother pointed out that Appellant was never in full-time general education classes during high school, as it is suggested in the records, but rather was in special education with a full time one-on-one assistant. Appellant's mother testified that Appellant is only able to work at the gas station because the owner of the station has a child with a developmental disability, so she understands Appellant's situation. Appellant's mother pointed out that the gas station had asked that Appellant be provided a job coach so that he can more effectively complete his tasks, however Michigan Rehabilitation Services (MRS) did not approve the request. Appellant's mother testified that the other jobs Appellant has held in the past, he has lost due to his behaviors and inability to get along with people. Appellant's mother indicated that Appellant does not have the ability to maintain learned skills without support. Appellant's mother testified that when Appellant first meets someone, he is their best

friend, but after a short time the new friend will do or say something to upset Appellant and then that person is an enemy for life. Appellant's mother indicated that as Appellant has gotten older, his problems have increased and he needs more help. Appellant's mother testified that if Appellant does not get the help he needs, there is going to be a big problem.

Appellant's Transition Coordinator testified that there has been some reluctance over the years for Appellant's family to verbalize Appellant's actual needs and the family has also underestimated the level of support they have provided to Appellant over the years. Appellant's Transition Coordinator also pointed out that Appellant was never in a full-time general education program at school and always had one-on-one assistance. Appellant's Transition Coordinator also testified that Appellant's skill deficits were also not accurately reported by the school. Appellant's Transition Coordinator indicated that Appellant would not be able to make it on his own. Appellant's Transition Coordinator testified that Appellant can be a good worker, but needs to generalize the skills that he already has. Appellant's Transition Coordinator testified that she and Appellant's family fear that he will put himself into a position where he will upset the wrong person and something tragic will happen.

The CMH's Behavioral Health and Waiver Specialist testified that some of the evidence presented by Appellant at the hearing was not known or available at the time the decision was made, so was not considered. The CMH's Behavioral Health and Waiver Specialist suggested that if Appellant's behaviors continued with his new placement in an AFC home and his new school, the family might want to request that CMH assess Appellant for eligibility for CMH services as a person with a serious mental illness or serious emotional disturbance, as opposed to a developmental disability.

Based on the evidence presented, Appellant did not prove, by a preponderance of the evidence, that the denial of requested CMH services was improper. The evidence shows that, at the time the decision in this matter was made, Appellant was living at home with his parents. (He has since moved into a General Adult Foster Care Home). Appellant is able to complete all of his personal hygiene tasks independently, although he requires prompting to be effective and stay on task. Appellant is able to clean the house, wash dishes and mop the floor. Appellant is able to prepare his own meals. Appellant passed the written portion of the driver's license exam, but failed the driving portion. Appellant does have a moped license, but does not have a moped because his father thinks it is too dangerous. Appellant uses his bicycle for transportation. Appellant's IQ has been measured at between 67 and 90. Appellant attends CTC (the post high school special education program) through Van Buren Intermediate School District. Appellant attended a transition program to work on improving his social skills before attending classes. Appellant also works 6-10 hours per week at a Shell gas station, where he stocks shelves, cleans floors and bathrooms, cleans the parking lot, and washes the gas pumps. Appellant is his own payee for Social Security, although his parents assist him with his finances. Appellant does not have a guardian. While Appellant struggles at times to get along with others, which affects his ability to train for

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and retain employment, likewise compromising his effectiveness in the community and sometimes at home, across various settings, he is attending individual therapy, which should assist with these issues. Appellant is also nonviolent and presents no evidence of physical danger to himself, other people, or property. Appellant also does not receive psychiatric services and his medications (Concerta and Celexa) are prescribed through his primary care doctor.

As such, the CMH was correct in determining that Appellant was not eligible for services as a person with a Developmental Disability (DD) because he did not have a substantial functional limitation in three or more areas of major life activities. Appellant is able to get his medications and therapy through his Medicaid HMO and he has been linked with other resources in the community to assist him. Since the decision in this matter was made, Appellant has moved into a general AFC home, which has full-time staff to assist Appellant with reminding and cuing for his daily tasks. Appellant has also started at a new school. As suggested by CMH at the hearing, if Appellant's behaviors continue with his new placement in the AFC home and his new school, the family might want to request that CMH assess Appellant for eligibility for CMH services as a person with a serious mental illness or serious emotional disturbance, as opposed to a developmental disability. However, based on the information available at the time the decision in this matter was made in ██████████, the CMH's decision is supported by the record.

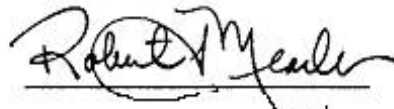
Accordingly, the Department's denial of Appellant's request for CMH services must be upheld because those services are not medically necessary.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated Appellant's CMH services.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.



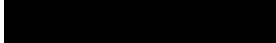
Robert J. Meade  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

cc: ██████████

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RJM 

Date Signed: 

Date Mailed: 

**\*\*\* 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.