

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 14-007012 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 a request for a hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████, Appellant's father, appeared and testified on Appellant's behalf. ██████████, Medicaid Fair Hearings Officer, represented the Respondent ██████████ County Community Mental Health Authority (CMH). ██████████, Case Manager Supervisor from the ██████████, and ██████████, Director of the Children's Home and Community-Based Services Waiver for the Michigan Department of Community Health, testified as witnesses for Respondent.

ISSUE

Did the CMH properly terminate Appellant's services through the Children's Home and Community-Based Services Waiver Program (CWP)?

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 CMH is under contract with the Michigan Department of Community Health to provide Medicaid covered services to beneficiaries who reside in its service area.
2. In turn, the CMH contracts with service providers such as the ██████████.
3. Appellant is a ██████████-year-old male who has been diagnosed with autism spectrum disorder and requires supervision and maximum assistance in all areas of life. (Testimony of ██████████)

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4. Appellant's representative applied for the CWP on Appellant's behalf through the CMH and the [REDACTED]. (Testimony of Appellant's representative).
5. The CWP is a program of limited capacity, and it therefore maintains a waiting list and uses a priority rating system to add children to the program as openings occur. (Testimony of [REDACTED]).
6. In [REDACTED], Appellant was offered a slot in the CWP and the enrollment process began. (Testimony of Appellant's representative; Testimony of [REDACTED]).
7. Due to circumstances unrelated to Appellant's eligibility for the CWP, there were delays in services being provided and no specific services were ever actually provided. (Testimony of Appellant's representative; Testimony of [REDACTED]).
8. Appellant's behaviors escalated while the services were in the process of being approved and his representative subsequently requested a residential placement for Appellant at the [REDACTED]. (Respondent's Exhibit A, page 6; Testimony of [REDACTED]).
9. In reviewing that request, staff from both the CMH and the [REDACTED] discussed with Appellant's representative the fact that Appellant would be terminated from the CWP if he entered the residential placement. (Testimony of Appellant's representative; Testimony of [REDACTED]; Testimony of [REDACTED]).
10. Appellant's representative indicated that he understood and still wanted to proceed with the residential placement. (Testimony of Appellant's representative; Testimony of [REDACTED]; Testimony of [REDACTED]).
11. Appellant's request for residential placement was approved and he moved into the [REDACTED] on [REDACTED]. (Testimony of Appellant's representative).
12. That same day, the [REDACTED] sent Appellant a letter and Advance Action Notice regarding the termination of services through the CWP. (Respondent's Exhibit A, pages 3-4).
13. Both the letter and notice stated that Appellant was no longer eligible for the CWP because he is no longer residing in the family home and there are no plans for him to return within the next thirty days. (Respondent's Exhibit A, pages 3-4).
14. The [REDACTED] notice also provided that the termination of services was effective [REDACTED]. (Respondent's Exhibit A, page 4).
15. On [REDACTED], the termination took effect and the Michigan Department of

Community Health began the process of adding a new child to the CWP. (Testimony of ██████████)

16. On ██████████, Appellant's representative removed Appellant from the ██████████ because he believed the conditions there were unsafe and inadequate. (Testimony of Appellant's representative).
17. Appellant's representative also attempted to have Appellant reinstated in the CWP, only to be told that Appellant's slot in the program had already been given to someone else and the CWP was again at capacity. (Testimony of Appellant's representative).
18. Appellant's representative was also advised to begin the process of applying for the CWP again, which he did. (Testimony of Appellant's representative; Testimony of ██████████)
19. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Petitioner's Exhibit 1, pages 1-3).

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

Additionally, 42 CFR 430.10 states:

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 also 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 USC 1396n(b)

Among the programs administered as part of that act is the Children's Home and Community Based Services Waiver Program (CWP) and, with respect to the CWP, the applicable version of the Medicaid Provider Manual (MPM) states:

SECTION 14 – CHILDREN'S HOME AND COMMUNITY-BASED SERVICES WAIVER (CWP)

The Children's Home and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

The Children's Waiver is a fee-for-service program administered by the CMHSP. The CMHSP will be held financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by the CMHSP and exceed the Medicaid fee screens or amount, duration and scope parameters.

Services, equipment and Environmental Accessibility Adaptations (EAAs) that require prior authorization from MDCH

must be submitted to the CWP Clinical Review Team at MDCH. The team is comprised of a physician, registered nurse, psychologist, and licensed master's social worker with consultation by a building specialist and an occupational therapist.

14.1 KEY PROVISIONS

The CWP enables Medicaid to fund necessary home- and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

The CMHSP is responsible for assessment of potential waiver candidates. The CMHSP is also responsible for referring potential waiver candidates by completing the CWP "pre-screen" form and sending it to the MDCH to determine priority rating.

Application for the CWP is made through the CMHSP. The CMHSP is responsible for the coordination of the child's waiver services. The case manager, the child and his family, friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in the Individual Plan of Services (IPOS). The IPOS must be reviewed, approved and signed by the physician.

A CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

14.2 ELIGIBILITY

The following eligibility requirements must be met:

- The child must have a developmental disability (as defined in Michigan state law), be less than 18 years of age and in need of habilitation services.

- The child must have a score on the Global Assessment of Functioning (GAF) Scale of 50 or

below.

- *The child must reside with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian for that child under the laws of the State of Michigan, provided that the relative is not paid to provide foster care for that child.*
- The child is at risk of being placed into an ICF/MR facility because of the intensity of the child's care and the lack of needed support, or the child currently resides in an ICF/MR facility but, with appropriate community support, could return home.
- The child must meet, or be below, Medicaid income and asset limits when viewed as a family of one (the parent's income is waived).
- The child's intellectual or functional limitations indicate that he would be eligible for health, habilitative and active treatment services provided at the ICF/MR level of care. Habilitative services are designed to assist individuals in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings. Active treatment includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment is directed toward the acquisition of the behaviors necessary for the beneficiary to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status.

*MPM, April 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 77-78
(Emphasis added by ALJ)*

Pursuant to the above policy, the CMH and the ██████████ terminated Appellant's services through the CWP. Appellant entered a residential placement on ██████████ and,

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on that same day, the ██████████ sent Appellant written advance notice that Appellant's services would be terminated effective ██████████ because he was no longer residing in the family home and there were no plans for him to return within ██████████ days.

The minor Appellant's representative bears the burden of proving by a preponderance of the evidence that the CMH and ██████████ erred in terminating Appellant's services. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the disputed decision in light of the information available at the time the decision was made.

Here, given the available information, Appellant's representative has failed to meet his burden of proof and the Respondent's decision must be affirmed. It is undisputed that, at the time the decision to terminate Appellant's services was made, Appellant had moved into a residential facility; there were no plans for him to return to the family home; and the expectation was that he would remain in the residential facility for quite some time. Accordingly, Appellant no longer met the eligibility requirements for the CWP as he did not reside with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian for that child under the laws of the ██████████, and he would not be receiving at least one children's waiver service per month. Given that Appellant no longer met the eligibility requirements for the CWP, the CMH and the ██████████ properly decided to terminate his services through the program.

In response, Appellant's representative testified that, regardless of what was planned for Appellant, Appellant returned to the family home and left the residential placement after ██████-and-a-█████ ██████ because of inadequate and unsafe conditions at the facility. Appellant's representative also testified that Appellant still needs services in the home through the CWP.

However, while Appellant's circumstances may have changed after his services were terminated, this Administrative Law Judge's jurisdiction is limited to reviewing the disputed decision in light of the information available at the time the decision was made and, as discussed above, the decision in this case was proper given that available information. Moreover, as testified to by Respondent's witnesses, by the time Appellant returned to the family home, the termination had already taken effect and Appellant's slot in the CWP had already been offered to someone else.

The undersigned Administrative Law Judge sympathizes with Appellant and his representative given how brief Appellant's stay was at the residential facility, but, given the applicable policies and the undisputed evidence in this case, the CMH properly terminated his services and the Department properly offered his slot in the CWP to another beneficiary.

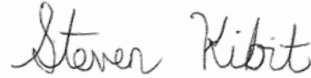
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly terminated Appellant's services through the Children's Home and Community-Based Services Waiver Program.

IT IS THEREFORE ORDERED that:

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



Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: 

Date Mailed: 

SK/db

cc: 

****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.