

**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. 14-007495 CMH
Case No. ██████████

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 Appellant.

After due notice, a hearing was held on ██████████ Appellant's brother and legal guardian, appeared and testified on Appellant's behalf. ██████████, Utilization Manager, appeared and testified on behalf of Respondent ██████████ Community Mental Health (CMH).

ISSUE

Did the CMH properly decide to terminate Appellant'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 CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area.
2. Appellant is █ year-old female who has been diagnosed with Down's syndrome; mood disorder, NOS; mild mental retardation; and a history of dementia. (Respondent's Exhibit A, pages 17, 24).
3. Appellant has been receiving services through the CMH, including supports coordination; skill-building and training; personal care services; Community Living Supports (CLS); psychiatric evaluations; and medication reviews. (Respondent's Exhibit A, page 13).

Docket No. 14-007495 CMH
Decision and Order

4. The personal care services and CLS are paid for by the CMH at a per diem rate and are provided by [REDACTED] a specialized residential setting that Appellant has lived at since [REDACTED]. (Petitioner's Exhibit 1, page 1; Respondent's Exhibit A, pages 5, 13, 17).
5. Progress notes generated since Appellant has been residing at [REDACTED] indicate that Appellant acts out by urinating on her bed or the floor. (Petitioner's Exhibit 3, pages 7, 10-14, 18-19).
6. By [REDACTED], which is the most recent progress note in the record discussing Appellant's urination, it was noted that Appellant's inappropriate urination is down to [REDACTED] a week, as opposed to [REDACTED] a day when she first moved into [REDACTED]. (Petitioner's Exhibit 3, pages 18-19).
7. The progress notes also reported that Appellant will engage in inappropriate behavior at work toward one of her job coaches. (Petitioner's Exhibit 3, pages 17-33).
8. That behavior is an ongoing issue at work, even with Appellant's behavior being addressed by staff and her taking a hiatus from working in the past. (Petitioner's Exhibit 3, pages 17-33).
9. In the [REDACTED], progress note, which is the most recent progress note in the record, it was noted that Appellant is still talking about moving in with her job coach and that she is fixated on that coach once again, but that Appellant is also easily redirected. (Petitioner's Exhibit 3, pages 28-29).
10. On [REDACTED], a Bio-Psycho-Social Assessment of Appellant was conducted by the CMH. (Respondent's Exhibit A, pages 15-32).
11. During that assessment, it was noted that:

[Appellant] continues to not be a fit for her current placement. Her level of functioning is much higher than her house mates. [Appellant] only requires minimal prompting to carry out household tasks. [Appellant] has no peer group at her current setting and relies very heavily on staff for relationship building and communication. [Appellant] has had some moments where she will "make-up" stories about staff both at home and at work. Sometimes these are sexual in nature. Staff are quick to handle these issues with

██████████
Docket No. 14-007495 CMH
Decision and Order

redirection and training is there if needed. [Appellant's] guardian refuses to move [Appellant] to a setting that would more closely meet [Appellant's] need where she could have a peer group. [Appellant] often communicates tot [sic] his [sic] worker that she is unhappy with her current setting and "she gets bored because no one talks." Will continue to pursue alternative placement.

Respondent's Exhibit A, page 17

12. On ██████████, an Individual Plan of Service (IPOS) meeting was held with respect to Appellant's plan for the upcoming year. (Respondent's Exhibit A, pages 2-14).
13. During that meeting, the CMH found that, while Appellant still requires supervision for her health and safety needs, she has improved significantly since the proper supports were put into place and she is at a much higher functioning level than those who reside with her at ██████████. (Respondent's Exhibit A, page 3).
14. The CMH also found that Appellant's current placement provides a higher level of monitoring than she currently needs and that, in order to keep improving, she needs a less restrictive setting. (Respondent's Exhibit A, page 3).
15. On ██████████, the CMH sent Appellant and her guardian written notice that the CLS and personal care being provided in a specialized residential setting would be terminated effective ██████████ because such a residential placement is not consistent with the least restrictive environment or Appellant's choice. (Petitioner's Exhibit 1, page 2).
16. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this case. (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.

Docket No. 14-007495 CMH
Decision and Order

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

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.

**Docket No. 14-007495 CMH
Decision and Order**

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. See 42 CFR 440.230.

Regarding medical necessity, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

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;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- 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;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- 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;
 - that are 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.

*MPM, July 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 12-14
(Emphasis added by ALJ)*

Similarly, regarding the location of services, the MPM states in part:

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.

*MPM, July 1, 2014 version
Mental Health/Substance Abuse Chapter, page 9
(Emphasis added by ALJ)*

██████████
Docket No. 14-007495 CMH
Decision and Order

Pursuant to the above policies, the CMH has decided to terminate Appellant's residential placement and services at ██████ on the basis that there exists another appropriate, efficacious, and less-restrictive setting where Appellant's medically necessary services could be provided.


Appellant's guardian disputes any such termination and, in doing so, bears the burden of proving by a preponderance of the evidence that the CMH erred and that the residential placement at ██████ is a medical necessity.

Here, given the evidence in this case, Appellant's guardian has failed to meet that burden of proof and the CMH's decision must therefore be affirmed. The reasons for the termination are well documented by the CMH and are generally undisputed by Appellant's guardian: Appellant has improved since being placed at ██████; she only needs minimal prompting to perform tasks; Appellant is at a higher functioning level than the other residents at ██████; she cannot engage with them; and is she limited by the restrictions put in place for those other residents. Moreover, the CMH also found that Appellant requires less monitoring than she is currently receiving.

Rather than disputing the basis for the CMH's decision, Appellant's guardian instead argues that Appellant's behavioral issues necessitate her remaining at ██████. In particular, Appellant's guardian notes Appellant's continuing issues with urination and boundaries. According to Appellant's guardian, given Appellant's boundary issues, she must be monitored at all times on a 2:1 basis in order to protect others from any false accusations of inappropriate conduct made by Appellant and to protect Appellant from being disbelieved if she makes any true accusations.

However, while Appellant's guardian correctly points to continuing behavioral issues exhibited by Appellant, the undersigned Administrative Law Judge, like the CMH, finds that those continuing issues insufficient to demonstrate a medical necessity for remaining in the more restrictive environment of ██████. The inappropriate urination issues have decreased significantly from the past and can be addressed in a less restrictive environment. Similarly, while the boundary issues are known and continuing, Appellant can be redirected and the issues do not, on their own, justify a more restrictive setting given Appellant's functioning level, especially where the CMH's witness persuasively argued that the more restrictive environment and Appellant's inability to engage with her more limited roommates are actually contributing to Appellant's inappropriate behaviors.

The MPM requires that services be provided in the least restrictive, most integrated setting possible, and Appellant's representative has failed to meet his burden of proving by a preponderance of the evidence that a residential placement at ██████ is a medical necessity in accordance with the Code of Federal Regulations.

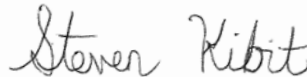

Docket No. 14-007495 CMH
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly decided to terminate Appellant's residential placement.

IT IS THEREFORE ORDERED that:

The CMH'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.