

**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. 14-007964 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Medicaid Fair Hearings Officer, represented the Respondent ██████████ County Community Mental Health Authority (CMH). ██████████, psychiatrist, testified as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for services?

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 (MDCH) to provide Medicaid covered services to beneficiaries who reside in its service area.
2. Appellant is a ██████ year-old Medicaid beneficiary who applied for services through the CMH in ██████████ (Respondent's Exhibit A, page 12)
3. On ██████████, CMH staff performed a clinical screening with Appellant. (Respondent's Exhibit A, pages 12-19).
4. During that screening, Appellant reported that she has a learning disability, which was diagnosed when she was a child and she now believes to be autism, and that she has had difficulties with school and employment throughout her life as a result. (Respondent's Exhibit A, page 12; Testimony of Appellant).

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5. Appellant also provided the CMH staff with a Psychological Evaluation Report from ██████████ in which a psychologist concluded that Appellant's test findings were reflective of borderline intelligence, with commensurate reading, spelling and math skills, and recommended methods through which Appellant could improve those skills. (Respondent's Exhibit A, pages 20-23).
6. That report noted Appellant's educational history, including the fact that she was held back in school ██████████ and received a GED in her ██████████; her employment history, including the fact that she ██████████ failed the test to become a correctional officer, but has worked as a chore manager at a long-term care facility; and her social history, including the fact that Appellant is ██████████ married and divorced, volunteers as an advocate for children, and generally prefers to be alone. (Respondent's Exhibit A, page 21).
7. Appellant further reported during the screening that someone assists her with transportation, laundry and other tasks because of some mild injuries Appellant sustained in the past. (Respondent's Exhibit A, page 15).
8. On ██████████, the CMH sent Appellant written notice that her request was denied on the basis that she did not meet the criteria for services:

The symptoms as reported are mild to moderate in nature. In addition, you reported that you are not at risk of harming yourself or others, you do not have a substance use problem that would cause your symptoms to get worse, you are not in a highly stressful environment and you can do most day to day activities without much difficulty.

Respondent's Exhibit A, page 2

9. On ██████████, Appellant filed a local appeal with the CMH. (Respondent's Exhibit A, pages 3, 5).
10. ██████████ reviewed that local appeal and she also concluded that Appellant was not eligible for services. (Respondent's Exhibit A, page 4).
11. The CMH then sent Appellant written notice that her local appeal had been denied. (Respondent's Exhibit A, pages 6-11).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing in this matter. (Petitioner's Exhibit 1, pages 1-9).

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13. In that request, Appellant asserts that she was improperly denied autism benefits. (Petitioner's Exhibit 1, page 1).

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,

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

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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)

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.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM) and, with respect to eligibility for mental health services through the CMH, the applicable version of 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.

MPM, April 1, 2014 version
Mental Health/Substance Abuse Chapter, page 3
(Emphasis added by ALJ)

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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:

- 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

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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.
 - 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)

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Here, pursuant to the MPM and Mental Health Code, the CMH 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 whose needs exceed the benefits of the Medicaid Health Plan she is enrolled in.

Appellant challenges that decision on appeal and, in doing so, bears the burden of proving by a preponderance of the evidence that the CMH erred in making the eligibility determination. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the CMH's decision in light of the information it had at the time it made that decision.

In this case, given the information available at the time of the denial, Appellant has failed to meet her burden of proof and the decision to deny her request for services must therefore be affirmed.


It is undisputed in this case that Appellant does not have a serious mental illness as that term is defined by the Mental Health Code. See MCL 330.1100d(3). 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 appears to assert that she has a developmental disability, there was no evidence of any diagnosis resulting in a functional impairment that substantially interfered with or limited three or more major life activities at the time of the denial. Even accepting as true Appellant's testimony regarding her learning disability, she only identified her disability as affecting [REDACTED] areas of major life activity, learning and economic self-sufficiency, and there is no evidence or testimony even suggesting that Appellant has substantial functional limitations elsewhere.

In response, Appellant testified that she was diagnosed with a learning disability as a child and that, based on what other people have told her, she believe that the learning disability is actually autism. She also testified that her learning disability has affected her education and employment, and that she would like assistance in those areas.

However, as testified to by [REDACTED], merely having a diagnosis of a learning disability or autism does not by itself qualify a beneficiary for services through the CMH and Appellant has failed to demonstrate that she meets the remaining criteria for services.

Accordingly, Appellant has failed to meet her burden of proving that the CMH erred and the decision to deny her request for services must therefore be affirmed.


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DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.

Steven Kibit

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.