

**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. 14-010061 CMH
Case No. ██████████

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 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.

██████████, Assistant Corporation Counsel, ██████████ Community Mental Health Authority, represented the Department (CMH or Department). ██████████, Director, ██████████, appeared as a witness for the Department.

ISSUE

Did CMH properly deny authorization for occupational therapy (OT) as well as speech, hearing and language therapy services for Appellant?

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 █ year-old Medicaid beneficiary, born ██████████, who has been receiving services through CMH. (Exhibit A, p 9; Testimony).
2. Appellant is diagnosed with autistic disorder, mental retardation, severity unspecified, and cognitive deficits. (Exhibit A, p 25; Testimony)
3. Appellant resides with her parents and two sisters and the family has limited informal supports. (Exhibit A, p 15; Testimony)
4. Appellant attended the ██████████ through ██████████ for kindergarten and now attends ██████████. Appellant has received OT, physical therapy (PT), and speech language therapy (SLT) services in school. (Exhibit A, p 15; Testimony)

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5. Appellant is currently receiving the following services from CMH: assessments, supports coordination, community living supports, and behavioral services. (Exhibit A, pp 15-26; Testimony).
6. Appellant had received OT and SLT through CMH in the past, but authorization for those services expired on [REDACTED]. (Exhibit A, pp 33-34; Testimony)
7. On [REDACTED], CMH received a request for continued OT and SLT for Appellant. (Exhibit A, p 2; Testimony)
8. On [REDACTED], the request for continued OT and SLT was denied because there was no documentation in the electronic medical records regarding the progression of the treatments. (Exhibit A, p 2; Testimony)
9. On [REDACTED], CMH sent an Adequate Action Notice to Appellant indicating that the request for OT and SLT services was denied. Specifically, the notice indicated that the services were denied because, “[t]here are no progress notes in the chart to evaluate progression of treatment.” (Exhibit A, p 5; Testimony)
10. Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit 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

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

Macomb County CMH contracts with the Michigan Department of Community Health to provide Medicaid services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only 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*.

With regard to occupational therapy, Section 3.19 of the Mental Health / Substance Abuse Chapter of the Michigan Medicaid Provider manual describes the state-plan service related to occupational therapy as follows:

3.19 OCCUPATIONAL THERAPY [CHANGE MADE 7/1/14]

Evaluation

Physician/licensed physician assistant/family nurse practitioner - prescribed (**revised 7/1/14**) activities provided by an occupational therapist licensed by the State of Michigan to determine the beneficiary's need for services and to recommend a course of treatment. An occupational therapy assistant may not complete evaluations.

Therapy

It is anticipated that therapy will result in a functional improvement that is significant to the beneficiary's ability to perform daily living tasks appropriate to his chronological developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.

Therapy must be skilled (requiring the skills, knowledge, and education of a licensed occupational therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed

physical therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services must be prescribed by a physician/licensed physician's assistant/family nurse practitioner (**revised 7/1/14**) and may be provided on an individual or group basis by an occupational therapist or occupational therapy assistant, licensed by the State of Michigan or by an occupational therapy aide who has received on-the-job training. The occupational therapist must supervise and monitor the assistant's performance with continuous assessment of the beneficiary's progress, but on-site supervision of an assistant is not required. An aide performing an occupational therapy service must be directly supervised by a qualified occupational therapist who is on site. All documentation by an occupational therapy assistant or aide must be reviewed and signed by the appropriately credentialed supervising occupational therapist.

*Michigan Medicaid Provider Manual
Mental Health / Substance Abuse Chapter
July 1, 2014, pp 19-20*

With regard to speech, hearing and language therapy, Section 3.23 of the Mental Health / Substance Abuse Chapter of the Michigan Medicaid Provider manual describes the state-plan service related to physical therapy as follows:

3.23 SPEECH, HEARING, AND LANGUAGE

Evaluation

Activities provided by a licensed speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.

Therapy

Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).

Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.

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Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a licensed speech language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, licensed occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.

Services may be provided by a licensed speech language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license). All documentation by the candidate must be reviewed and signed by the appropriately licensed supervising speech-language pathologist or audiologist.

*Michigan Medicaid Provider Manual
Mental Health / Substance Abuse Chapter
July 1, 2014, pp 21-22*

CMH's ██████████ Director testified that the ██████████ reviews authorization requests for services and makes level of care determinations once services are authorized. CMH's ██████████ Director reviewed Appellant's diagnosis and the services she is currently receiving from CMH. CMH's ██████████ Director testified that Appellant receives OT and SLT in school and had received OT and SLT through the CMH as well, but that authorization for those services ended on ██████████. CMH's ██████████ Director indicated that the CMH did receive a request for continued authorization for OT and SLT for Appellant, but that the request had to be denied because there were no progress notes in Appellant's electronic medical record to evaluate the progression of the treatment, as required by policy. CMH's ██████████ Director did indicate that the CMH has since received the progress notes, so Appellant's supports coordinator could resubmit Appellant's request for OT and SLT.

Appellant's mother testified Appellant had just started PT and SLT, and then continuation for the services was denied. Appellant's mother also testified that her daughter's supports coordinator recently changed, but that she now has a new one. Appellant's mother testified that she would like her daughter to continue receiving PT and SLT because she needs the therapies.

Based on the evidence presented, the CMH properly denied Appellant's request for continued PT and SLT based on the information provided. As indicated in the above policy, it is anticipated that therapies will result in functional improvements that are significant to the beneficiary's ability to perform daily living tasks appropriate to her chronological developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e. maintainable). Here, when Appellant's request for continued OT and SLT was submitted to the CMH, no progress notes were included. As such, the CMH had no

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ability to measure Appellant's progress with the therapies and Appellant's request was properly denied.

The burden is on Appellant to prove by a preponderance of evidence that PT and SLT were improperly denied. Because Appellant had not provided the required evidence at the time the determination was made, Appellant did not meet this burden.

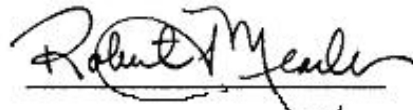
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The CMH properly denied authorization for PT and SLT services for Appellant.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Nick Lyons, Director
Michigan Department of Community Health

cc:

[Redacted]

RJM [Redacted]

Date Signed: [Redacted]

Date Mailed: [Redacted]

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***** 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.