

**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:

Docket No. 2014-10053 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 the request for a hearing filed on behalf of the Appellant.

After due notice, a hearing was held on ██████████ ██████████, Appellant's mother and temporary legal guardian, appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's step-father, also testified during the hearing. ██████████, Assistant Corporation Counsel, represented Respondent ██████████ ██████████ (CMH). ██████████, Access Center Supervisor, testified as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for 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 male who has been diagnosed with Bipolar disorder and depression. Appellant also has a history of a closed head injury. (Petitioner's Exhibit 3, page 1; Petitioner's Exhibit 6, pages 1-2; Respondent's Exhibit A, pages 13, 20).

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3. On [REDACTED], Appellant was admitted to the day hospital program at [REDACTED] on the petition of his outpatient therapist. (Petitioner's Exhibit 6, pages 1-11).
4. At that time, it was noted that Appellant had a history of emotional problems and was noncompliant with his medications. (Petitioner's Exhibit 6, pages 1-11).
5. In the hospital, Appellant was seen in individual therapy and received the appropriate medications. (Petitioner's Exhibit 6, pages 1-11).
6. His condition gradually improved and he was discharged by choice, but against medical advice, on [REDACTED]. (Petitioner's Exhibit 6, pages 1-11).
7. After being discharged, Appellant returned to living with his mother and step-father. (Petitioner's Exhibit 6, pages 1-11).
8. By [REDACTED], Appellant became increasingly reclusive. He would stay in his room with his dog and refuse to interact with others. (Petitioner's Exhibit 8, pages 1-2; Respondent's Exhibit A, page 13; Testimony of Appellant's representative).
9. Appellant was able to attend to his personal needs, though he sometimes chose not to, and was not considered to be a safety risk to others. (Petitioner's Exhibit 8, pages 1-2; Respondent's Exhibit A, page 13; Testimony of Appellant's representative).
10. Appellant would exhibit unpredictable mood swings. (Petitioner's Exhibit 8, pages 1-2; Respondent's Exhibit A, page 13; Testimony of Appellant's representative).
11. On or about [REDACTED], Appellant's mother telephoned the police after not seeing Appellant for over [REDACTED] hours and being unable to get him to answer his bedroom door. (Petitioner's Exhibit 8, page 2; Testimony of Appellant's representative).
12. She was worried that Appellant had overdosed on his medications and therefore had the police break down his bedroom door. (Petitioner's Exhibit 8, page 2; Testimony of Appellant's representative).
13. Appellant was found sleeping. (Petitioner's Exhibit 8, page 2; Testimony of Appellant's representative).

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14. On [REDACTED], the [REDACTED] for the [REDACTED] y of [REDACTED] granted Appellant's mother temporary guardianship over him. (Respondent's Exhibit A, page 13; Testimony of Appellant's representative).
15. The next day, she went to the CMH and requested residential placement on Appellant's behalf. (Respondent's Exhibit A, pages 13-22).
16. On [REDACTED], the CMH sent Appellant's mother written notice that the request was being denied as Appellant did not meet the criteria for the requested service. (Respondent's Exhibit A, page 6).
17. On [REDACTED], the Michigan Administrative Hearing System (MAHS) receiving a complete request for hearing filed on behalf of Appellant by his mother/temporary guardian.
18. The temporary guardianship was subsequently extended to [REDACTED]. (Petitioner's Exhibit 2, page 1; Petitioner's Exhibit 10, page 1).
19. A hearing was held, by telephone, on [REDACTED]
20. During that hearing, Appellant indicated that the guardianship was contested and that he did not want residential placement through the CMH. (Testimony of Appellant).
21. However, as Appellant had a temporary guardian and that guardian wanted to proceed with the appeal, the hearing was held.
22. Subsequently, MAHS received a copy of a [REDACTED] order of [REDACTED] terminating the temporary guardianship on the basis that Appellant was not in need of a guardian.
23. Given the termination of the temporary guardianship and Appellant's previous statements that he did not want residential placement, MAHS scheduled a telephone status conference for [REDACTED]
24. However, Appellant failed to appear for that conference or otherwise contact MAHS.

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).

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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

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

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(CMS) the Department of Community Health (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

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

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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, October 1, 2013 version
Mental Health/Substance Abuse Chapter, pages 12-14
(underline added by ALJ)*

Appellant bears the burden of proving by a preponderance of the evidence that residential placement is a medical necessity in accordance with the Code of Federal Regulations (CFR).

Here, given the above evidence and policies, Appellant did not meet that burden of proof. Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant, specifically his mother and step-father's home. Clearly, Appellant's placement in that home is less restrictive than any residential placement. Furthermore, as noted above, "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." No less-restrictive levels of treatments, services or a supports have even been requested or unsuccessfully attempted in this case and the mere fact that Appellant is isolated or having difficulties

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with his mother and step-father is insufficient to justify residential placement at this time. As indicated by the CMH's representative, to the extent other services are appropriate and medically necessary, Appellant is free to request services at any time.

Appellant's mother and step-father have indicated that they will be evicting Appellant if the request for residential placement is not granted. However, Appellant lived there at the time of the request and this Administrative Law Judge is limited to reviewing the information the Department had at the time the denial of long-term residential placement was made and, based on the information it had, it properly denied the request. Moreover, the possibility of eviction from one home does not demonstrate that other less restrictive services would be unsuccessful or unsafe.

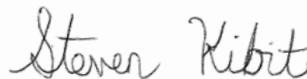
With respect to the decision that is before this Administrative Law Judge, *i.e.* the request for residential placement, Appellant bears the burden of proving by preponderance of the evidence that the requested service is medically necessary and in accordance with the applicable policy and regulations. Here, as discussed above, Appellant did not meet the burden and the CMH's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied the request for residential placement.

IT IS THEREFORE ORDERED that:

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



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [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.