

**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. 2014-10064 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 minor Appellant.

After due notice, a hearing was held on ██████████ Appellant's mother, appeared and testified on Appellant's behalf. ██████████, a behavioral therapist at the ██████████, also testified on Appellant's behalf. ██████████, Assistant Corporation Counsel, represented Respondent ██████████ County Community Mental Health (CMH). ██████████, Director of the CMH's Access Center, also 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 attention deficit hyperactivity disorder (ADHD), hyperactive or combined; impulse-control disorders not otherwise specified; mild mental retardation; and epilepsy, unspecified, intractable. (Respondent's Exhibit A, page 10).
3. Appellant's mother applied for CMH services on Appellant's behalf and an initial intake was performed on ██████████. (Respondent's Exhibit A, pages 12-33).

**Docket No. 2014-10064 CMH**  
**Decision and Order**

4. During intake, it was noted that Appellant's mother is his sole caregiver and that Appellant requires a moderate amount of support with completing daily tasks. (Respondent's Exhibit A, pages 13, 20).
5. Additionally, the intake evaluation also noted that Appellant recently disclosed sexual abuse by his biological father and that Appellant himself had a criminal sexual conduct (CSC) charge at age [REDACTED]. (Respondent's Exhibit A, page 19).
6. Appellant also had an open Children's Protective Services (CPS) case for sexual misconduct at the time of intake. (Respondent's Exhibit A, page 19).
7. Appellant did attend special education classes in school in the past, but he is unable to be maintained in school because of his sexually inappropriate behavior with classmates. (Respondent's Exhibit A, page 20).
8. Appellant also engages in challenging, impulsive, aggressive or sexually inappropriate behavior at home and in the community. (Respondent's Exhibit A, page 20).
9. In [REDACTED], Appellant cut his wrists and was hospitalized. (Respondent's Exhibit A, page 20).
10. At the end of intake, it was determined that services would be authorized and that the person center plan (PCP) process would begin. (Respondent's Exhibit A, page 33).
11. However, there was a delay in developing a PCP and implementing services, in part because Appellant was admitted to [REDACTED] between [REDACTED] and [REDACTED]. (Testimony of [REDACTED]).
12. The CMH did subsequently authorize services, with an effective start date of [REDACTED]. (Respondent's Exhibit A, pages 35-36).
13. Among the services authorized were a nursing assessment; a mental health assessment; targeted case management; mental health service plan development; therapeutic prophylactic injections; a psychiatric diagnostic evaluation; medication reviews; home care family training; home care non-family training; respite care services; and Community Living Supports (CLS). (Respondent's Exhibit A, pages 35-36, 39).

██████████  
**Docket No. 2014-10064 CMH**  
**Decision and Order**

14. In lieu of a number of those services, the minor Appellant's representative/mother had requested that Appellant be placed in a children's residential home due to the fact that he is a juvenile sex offender and a danger to society who requires care ██████████ hours a day, ██████████ days a week. (Testimony of Appellant's representative).
15. On ██████████, the CMH sent Appellant written notice stating that the request for "Children's Residential" was denied. The reason given in the notice was that "Service(s) is a non-crisis, non-urgent General Fund Service." (Respondent's Exhibit A, page 6).
16. Appellant's representative filed a local appeal with respect to that denial, but that local appeal was subsequently denied. (Respondent's Exhibit A, pages 38-40).
17. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed on behalf of Appellant in this matter. (Respondent's Exhibit A, page 8).

**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

**Docket No. 2014-10064 CMH**  
**Decision and Order**

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.

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.

Moreover, regarding the location of such services, the applicable version of the Medicaid Provider Manual (MPM) states:

**2.3 LOCATION OF SERVICE [CHANGE MADE 10/1/13]**

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

**Docket No. 2014-10064 CMH**  
**Decision and Order**

areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. 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 home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- Nursing facility mental health monitoring;
- Psychiatric evaluation;
- Psychological testing, and other assessments;
- Treatment planning;
- Individual therapy, including behavioral services;
- Crisis intervention; and
- Services provided at enrolled day program sites.

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

Medicaid does not cover services delivered in Institutions of Mental Disease (IMD) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is licensed as a "children's therapeutic group

**Docket No. 2014-10064 CMH**  
**Decision and Order**

home" as defined in Section 722.111 Sec.1(f) under Act No. 116 of the Public Acts of 1973, as amended, or (revised 10/1/13) it is for the purpose of transitioning a child out of an institutional setting (CCI). The following mental health services initiated by the PIHP (the case needs to be open to the CMHSP/PIHP) may be provided within the designated timeframes:

- Assessment of a child's needs for the purpose of determining the community based services necessary to transition the child out of a CCI. This should occur up to 60 days prior to the anticipated discharge from a CCI.
- Wraparound planning or case management. This should occur up to 60 days prior to discharge from a CCI.

Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities).

*MPM, October 1, 2013 version*  
*Mental Health/Substance Abuse Chapter, pages 9-10*  
*(underline added by ALJ)<sup>1</sup>*

Here, the sole issue on appeal is the denial of the request for residential placement for the minor Appellant. With respect to that issue, Appellant and his representative bear the burden of proving by a preponderance of the evidence that the CMH erred.

The relevant policy from the MPM quoted above establishes that Medicaid does not cover residential services provided to children with a serious emotional disturbance in a Child Caring Institution (CCI) unless it is for the purpose of transitioning a child out of an institutional setting. The policy further provides that Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities.

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<sup>1</sup> The quoted policy was also provided as pages 42-43 of Respondent's Exhibit A.

**Docket No. 2014-10064 CMH**  
**Decision and Order**

The minor Appellant appears to have been diagnosed with both developmental disabilities and serious emotional disturbances in this case and the record is not entirely clear as to the nature of residential placement that Appellant's representative seeks. However, the documentation and testimony also suggest that Appellant's representative requested a residential placement because of Appellant's serious emotional disturbances and in order to have his aggressive and sexually inappropriate behavior managed and supervised. Given that basis for the request, the residential placement would not be a covered Medicaid service.

Moreover, there has been no demonstration or even a suggestion that Appellant's representative seeks a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Without such a demonstration, Appellant cannot meet his burden of proof or overcome the clear prohibition found in the above policy against providing services to children with serious emotional disturbance in CCIs.<sup>2</sup>

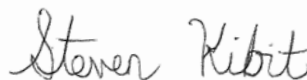
Accordingly, with respect to the requested residential placement at issue in this case, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof and the CMH's decision must be affirmed

**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**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

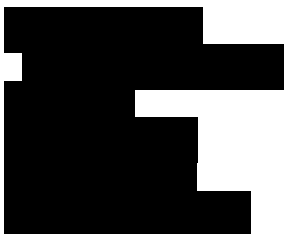
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<sup>2</sup> The CMH also argues that it has authorized services available in the community that they believe can assist the Appellant and his family in dealing with mental health and related behavioral problems. Those authorized services are not at issue in this appeal and this Administrative Law Judge will not address them beyond noting that they have only recently been put in place and it cannot be said at this time that the less restrictive level of treatment has been unsuccessful. Moreover, to the extent those services prove to be insufficient in the future, Appellant may request additional services and, if medically necessary, have them adjusted.

**Docket No. 2014-10064 CMH  
Decision and Order**

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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.