

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
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. 2014-30035 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 on behalf of the Appellant.

██████████, Due Process Hearings Coordinator, appeared on behalf of ██████████ County Community Mental Health. ██████████, Director of Supports Coordinator, ██████████ and ██████████, Compliance Coordinator, appeared as witnesses for the CMH.

**ISSUE**

Did ██████████ County Community Mental Health (CMH) properly deny Appellant transportation to competitive employment?

**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 ██████████. Appellant is diagnosed with Asperger's syndrome. (Exhibit 1; Testimony).
2. CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.
3. Appellant is a Medicaid beneficiary receiving services through ██████████ County Community Mental Health (CMH). Appellant's current services include respite, CLS services, vocational skill building, and volunteer services through the vocational program. Appellant's competitive employment consists of 6 hours of work per week as a dishwasher at ██████████. (Exhibit B, p 2; Testimony)

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4. Appellant lives with his mother in an apartment. (Exhibit B, p 2; Testimony).
5. At a meeting with Appellant and his mother in their home on [REDACTED], Appellant's supports coordinator informed Appellant and his mother that CMH could no longer pay for transportation to his job at [REDACTED] because the job was competitive employment. Appellant's supports coordinator provided Appellant and his mother with information on alternative transportation options. (Exhibit D, p 7; Testimony).
6. The goal of securing alternative transportation to Appellant's job was incorporated into Appellant's Plan of Service on [REDACTED], but was not attempted by Appellant because Appellant's mother did not support the change. (Exhibit C, p 8; Testimony).
7. On [REDACTED], Appellant was sent an Advance Action Notice informing him that transportation to his job was terminated because it was not a covered Medicaid service. Appellant's notice included a notice of hearing rights. (Exhibit A, pp 1-2).
8. An Individual Plan of Service meeting was held in Appellant's home on [REDACTED], at which time it was reiterated to Appellant and his mother that transportation to competitive employment was not a covered Medicaid service. (Exhibit B; Testimony).
9. 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*

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent she 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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

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.*

The *Medicaid Provider Manual, Mental Health/Substance Abuse* section articulates Medicaid policy for Michigan. It states with regard to transportation:

### **3.27 TRANSPORTATION**

PIHPs are responsible for transportation to and from the beneficiary's place of residence when provided so a beneficiary may participate in a state plan, HSW or additional/B3 service at an approved day program site or in a clubhouse psychosocial rehabilitation program. MHPs are responsible for assuring their enrollees' transportation to the primary health care services provided by the MHPs, and to (nonmental health) specialists and out-of-state medical providers. The DHS is responsible for assuring transportation to medical appointments for Medicaid beneficiaries

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not enrolled in MHPs; and to dental, substance abuse, and mental health services (except those noted above and in the HSW program described in the Habilitation Supports Waiver for Persons with Developmental Disabilities Section of this chapter) for all Medicaid beneficiaries. (Refer to the local DHS or MHP for additional information, and to the Ambulance Chapter of this manual for information on medical emergency transportation.)

PIHP's payment for transportation should be authorized only after it is determined that it is not otherwise available (e.g., DHS, MHP, volunteer, family member), and for the least expensive available means suitable to the beneficiary's need.

*Medicaid Provider Manual*  
*Mental Health/Substance Abuse Chapter*  
*October 1, 2013, p 22*

The CMH witness testified that transportation to and from Appellant's job was terminated because such transportation is not a covered Medicaid service. The CMH witness explained that there is a distinction between supported employment, where a beneficiary would have a job coach, and competitive employment, where a beneficiary is working on his own. With supported employment, transportation would be covered per the Medicaid Provider Manual, but with competitive employment, it is not.

Appellant's mother testified that Appellant is competitively employed and that she understands the CMH's argument, however, Appellant cannot be left alone as far as transportation. Appellant's mother indicated that Appellant cannot catch a bus on his own and that if transportation is discontinued, Appellant will need to be pulled from a job that he loves. Appellant's mother testified that the [REDACTED] bus offered by CMH is too unreliable and would make Appellant very upset if it did not arrive on time. Appellant's mother also indicated that a taxi would be difficult for Appellant unless it was the same driver every time as Appellant becomes very anxious around new people. Appellant's mother testified that currently she has to leave her job to pick Appellant up from work. Appellant's mother also indicated that Appellant only makes \$ [REDACTED] per week, most of which would be eaten up by taxi fees if transportation through CMH is not continued.

This administrative law judge must follow the CFR and the state Medicaid policy, and is without authority to grant transportation not in accordance with the CFR and state policy. The CMH provided sufficient evidence that it adhered to the CFR and state policy when not authorizing transportation to Appellant's competitive employment. As indicated above, "PIHPs are responsible for transportation to and from the beneficiary's place of residence when provided so a beneficiary may participate in a state plan, HSW or additional/B3 service at an approved day program site or in a clubhouse psychosocial rehabilitation program." Appellant's employment is not a "state plan, HSW or additional/B2 service" so the CMH is not authorized to provide transportation to and from Appellant's job. Appellant, who bears the burden of proving by a preponderance of evidence that transportation to his job should be covered, did

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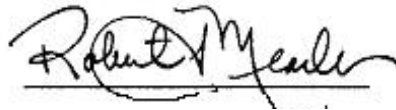
not meet that burden.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Appellant transportation to his job.

**IT IS THEREFORE ORDERED** that:

The CMH decision is AFFIRMED.



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

CC:



Date Signed: April 4, 2014

Date Mailed: April 4, 2014

**\*\*\* 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.