

**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) 334-4147

IN THE MATTER OF:

████████████████████

Docket No. 2014-34883 CMH
Case No. ██████████

Appellant

_____ /

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 father, appeared and testified on Appellant's behalf. Appellant also appeared, but did not testify. ██████████, Supports Coordinator, also appeared as a witness.

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

ISSUE

Did the CMH properly deny Appellant's request for continued behavioral 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. Appellant is a ██████ year old Medicaid beneficiary, born ██████████, receiving services through ██████████ Community Mental Health (CMH). (Exhibit A, p 11; Testimony)
1. 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.
2. Appellant is diagnosed with Impulse Control Disorder and Moderate Mental Retardation. (Exhibit A, p 22; Testimony)

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3. Appellant lives in a private residence with father and step-mother. (Exhibit A, p 22; Testimony)
4. Appellant attends the [REDACTED] school. (Exhibit A, p 22; Testimony)
5. Appellant currently receives supports coordination, respite services, overnight respite services and community living supports (CLS) through CMH. Behavioral services were added in [REDACTED]. (Exhibit A, p 23; Testimony)
6. Following an Annual Assessment on [REDACTED], the assessor determined that Appellant exhibited no challenging behaviors that would warrant continued behavioral services. (Exhibit A, pp 11-34; Testimony)
7. A progress note dated [REDACTED] noted that non-compliance, lying, and stealing behaviors by Appellant were noted, but that the frequency was periodic. (Exhibit A, p 36; Testimony)
8. In [REDACTED], Appellant's psychologist reported that Appellant's father did not report any pressing behavioral issues. The psychologist informed the father that much of Appellant's behavior that her father finds problematic is part of typical behavior. (Exhibit A, p 37; Testimony)
9. In [REDACTED] and [REDACTED], Appellant's father reported that, with one exception, Appellant's behavior was good and that things were going generally well. (Exhibit A, pp 39-42)
10. On [REDACTED], CMH sent an Action Notice to Appellant's father informing him that behavioral services would no longer be covered. (Exhibit A, pp 5-6; Testimony)
11. Appellant's request for a 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 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. 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 CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

The *Medicaid Provider Manual, Mental Health/Substance Abuse*, section articulates Medicaid policy for Michigan. It states, in relevant part:

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.

January 1, 2014, p 13

The CMH ██████████ Director testified that the ██████████ reviewed Appellant's records and determined that continued behavioral services were no longer medically necessary because Appellant's maladaptive behaviors have decreased over time. The

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CMH [REDACTED] Director indicated that following an annual assessment on [REDACTED], the assessor found that Appellant no longer required behavioral services and that this finding was supported by the progress notes in Appellant's records.

Appellant's father testified that the progress notes referenced were never shown to him, or approved by him, and he indicated that he believed the process CMH used to reduce his daughter's services was flawed. Appellant's father indicated that Appellant continues to have impaired social communication skills and he is very concerned that when the time comes for her to move to a more independent living setting, she will not be ready. Appellant's father pointed out that Appellant does not tell him when she runs out of things; she simply will take the item from someone else. Appellant's father testified that Appellant is a great worker and will be able to hold down a job some day and that he wants her to be able to take care of herself. Appellant's father testified that Appellant does not like confrontation and does not like being told what to do or how to do things. Appellant's father indicated that he is not a professional and does not know how to change Appellant's behaviors.

In response, CMH's representative indicated that the [REDACTED] now had a better idea of what Appellant's father was seeking after hearing him testify and that they would meet with him to address those concerns through the use of other services Appellant is eligible for, such as CLS.

Appellant bears the burden of proving by a preponderance of the evidence that behavioral services are medically necessary. CMH provided sufficient evidence that it adhered to federal regulations and state policy when it determined that behavioral services were not medically necessary. Evidence from both the annual assessment and the progress notes indicate that Appellant exhibits no challenging behaviors that would warrant behavioral services.

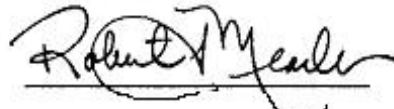
As indicated above, medically necessary services must be based on information provided by the beneficiary and her family, based on clinical information, made by appropriately trained professionals, and sufficient in amount, scope and duration to reasonably achieve their goals. Here, there is no evidence that Appellant exhibits the type of behavioral issues that would require behavioral services. The other services Appellant is authorized for, including supports coordination, respite services, overnight respite services, and CLS are sufficient in amount, scope and duration to meet Appellant's needs.

DECISION AND ORDER

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

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:

[REDACTED]

RJM [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.