

**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. 2014-34889 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████, Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, attorney and Due Process Hearings Coordinator, represented the Respondent ██████████ ██████████ ██████████, Director of Intake, and ██████████ Compliance Coordinator, from the ██████████ also testified as witnesses for the ██████████

**ISSUE**

Did ██████████ properly determine that Appellant did not meet the eligibility requirements for Medicaid Specialty Supports and Services through the ██████████ as a developmentally disabled person?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. ██████████ is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in its service area.
2. In turn, ██████████ contracts with service providers, such as ██████████ and ██████████
3. Specifically, ██████████ ██████████ conducts the initial intakes and assessments of people applying for services through the ██████████.

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4. On [REDACTED] 2013, Appellant's mother/representative telephoned [REDACTED] and requested services on Appellant's behalf. (Respondent's Exhibit D, pages 1-10).
5. During that intake, Appellant's mother reported that Appellant had been diagnosed with spina bifida and hydrocephalus. (Respondent's Exhibit D, page 1).
6. Appellant's mother also reported that she was in the process of seeking guardianship over Appellant because Appellant was going online, interacting with men, and giving those strangers her address. (Respondent's Exhibit D, pages 1, 3).
7. She further reported during intake that Appellant has memory problems; can eat food but needs to be monitored; cannot use a stove safely; is limited in receptive speech, but is able to speak on her own; writes and reads at a 5th grade level; is in a wheelchair and cannot walk on her own; needs to be reminded or monitored in order to complete most Activities of Daily Living (ADLs); cannot live alone; and does not understand the value of money. (Respondent's Exhibit D, pages 3-4).
8. In the report generated following the intake, [REDACTED] staff indicated that it was waiting for further paperwork from Appellant's mother, including a report regarding a psychological examination Appellant would be undergoing soon. (Respondent's Exhibit D, page 10).
9. After receiving that paperwork, [REDACTED] was to forward Appellant's case on to a developmental disability service provider. (Respondent's Exhibit D, page 10).
10. As part of the guardianship process, Appellant was referred for a psychological evaluation at the [REDACTED] within the [REDACTED]. (Respondent's Exhibit C, pages 1-5).
11. On [REDACTED] and [REDACTED] that evaluation was performed. (Respondent's Exhibit C, pages 1-5).
12. In the report issued following that evaluation, the psychologist stated that Appellant had a full-scale IQ of 86, but with extremely low scores on tasks of short-term auditory memory and attention, which suggested that her full-scale score should be viewed with caution. (Respondent's Exhibit C, pages 1-2).
13. The report also provided that an individual with unevenly distributed pattern of intellectual ability, such as Appellant, would understand and

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process verbal and visual spatial tasks, but fail to remember to carry out the tasks or take a long time in doing so. (Respondent's Exhibit C, page 2).

14. In the mental area, the report concluded that, despite average verbal and visual spatial ability, Appellant will need a guardian to assist her with tasks of daily living that require memory and motor speed. (Respondent's Exhibit C, page 2).
15. With respect to social skills, the report concluded that Appellant's skills were excellent and that no guardian is needed. (Respondent's Exhibit C, pages 2-3).
16. With respect to educational abilities, the report noted that Appellant graduated high school and attended some college before postponing any higher education due to academic difficulties. (Respondent's Exhibit C, page 3).
17. The report further provided that Appellant's abilities are very low in mathematic calculations and that she would be unable to carry out daily living tasks that involve arithmetic, such as paying bills, getting change, or budgeting, without assistance. (Respondent's Exhibit C, pages 3-4).
18. With respect to adaptive behavior, the report also concluded that, while Appellant is able to follow structure daily routines and may one day be able to live alone after training and practice, she needs assistance at this time. (Respondent's Exhibit C, pages 3-4).
19. While that psychological report was completed in [REDACTED] [REDACTED] did not forward Appellant's case onto [REDACTED], a direct developmental disability service provider, until [REDACTED] (Testimony of [REDACTED]).
20. On [REDACTED] staff developed a Personal Profile for Appellant, in which it noted that Appellant presented well mannered; is always able to make herself understood; had dropped out of college; and fills her time by accessing and trying to meet males through the internet. (Respondent's Exhibit F, page 1).
21. The profile also provided that Appellant needs assistance with a number of tasks, including some personal care assistance; assistance in the community with transportation, shopping, leisure choices, banking, and socialization; and reminders to take her medications. (Respondent's Exhibit F, pages 1-2).
22. The profile also states that needs Appellant needs total support with

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respect to mobility and uses a wheelchair with total support to transfer, move and shift positions. (Respondent's Exhibit F, page 1).

23. ██████████ staff reviewed that profile, in addition to the intake performed at ██████████ and the psychological report issued by ██████████, and concluded that Appellant did not meet the criteria for Medicaid Specialty Supports and Services through CMH as a developmentally disabled person. (Respondent's Exhibit B, pages 1-2; Testimony of ██████████).
24. On ██████████ sent Appellant written notice that the request for services was denied. (Petitioner's Exhibit 1, pages 3-4; Respondent's Exhibit A, pages 1-2).
25. On ██████████ of the ██████████ issued an Order Appointing Guardian for Individual With Developmental Disability with respect to Appellant and naming her mother as a guardian for a number of areas. (Petitioner's Exhibit 1, pages 5-6).
26. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-6).

**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*

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

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy regarding eligibility for mental health services and a beneficiary must meet the eligibility requirements for services. With respect to eligibility, the MPM states:

### **1.6 BENEFICIARY ELIGIBILITY**

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record.

*MPM, April 1, 2014 version*

The state of Michigan's Mental Health Code, MCL 330.1100d, defines those first two conditions as follows:

2. "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. "V" codes in the diagnostic and statistical manual of mental disorders.

3. "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. A "V" code in the diagnostic and statistical manual of mental disorders.

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Additionally, with respect to developmental disabilities, the Mental Health Code, MCL 330.1100a(25), provides:

(25) "Developmental disability" means either of the following:

- a. If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
  - i. Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
  - ii. Is manifested before the individual is 22 years old.
  - iii. Is likely to continue indefinitely.
  - iv. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
    - (A) Self-care.
    - (B) Receptive and expressive language.
    - (C) Learning.
    - (D) Mobility.
    - (E) Self-direction.
    - (F) Capacity for independent living.
    - (G) Economic self-sufficiency.
  - v. Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- b. If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

In this case, Appellant's representative argues that Appellant meets all of the criteria for having a developmental disability and is therefore eligible for services through the CMH.

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██████████ and ██████████ on the other hand, found that Appellant does not meet the criteria for having a developmental disability. While they agree that Appellant has a severe, chronic condition that is attributable to a mental or physical impairment or a combination of mental and physical impairments; manifested before the individual is ██████████ years old; and is likely to continue indefinitely; they also determined that Appellant only has a substantial functional limitation in ██████████ of the listed major life activities: capacity for independent living and economic self-sufficiency.

Appellant bears the burden of proving by a preponderance of the evidence that ██████████ and ██████████ erred in making that determination. Moreover, this Administrative Law Judge's jurisdiction is limited to reviewing the Respondent's decision in light of the information it had at the time it made that decision.

Here, given the available information, the ██████████ and ██████████ erred in determining that Appellant did not meet the eligibility requirements for Medicaid Specialty Supports and Services through the ██████████ as a developmentally disabled person. In light of the undisputed findings regarding Appellant's impairments and the effects of those impairments, Appellant would only need to have a substantial functional limitation in one of the following five areas to be eligible for services: self-care; receptive and expressive language; learning; mobility; or self-direction.

Here, it is also clear that, at the very least, Appellant also has a substantial functional limitation in the major life activity of mobility. ██████████ itself found during its assessment that Appellant needs total support with respect to mobility and uses a wheelchair with total support to transfer, move and shift positions. Given that dependence on adaptive equipment and others, Appellant has a substantial functional limitation in mobility.

Moreover, while ██████████ credibly testified and noted that Appellant has no difficulty navigating to and from social situations, scheduling transportation through a company, or getting rides from family/friends with handicap accessible vehicles, those findings are ultimately immaterial. The finding regarding mobility made by the ██████████ and ██████████ appears to be based on the fact that, while Appellant requires total support for mobility, she is mentally capable of arranging for assistance with all her mobility and transportation needs. However, substantial functional limitations are not limited to mental capabilities and the Mental Health Code specifically refers to the effects of a mental or physical impairment or a combination of mental and physical impairments. Due to her impairments, Appellant is dependent on others for her mobility needs and, as such, her impairments have resulted in a substantial functional limitation in the major life activity.

Accordingly, given the other, undisputed findings, Appellant does have a substantial functional limitation in three or more of the listed areas of major life activity and she therefore meets the eligibility requirements for Medicaid Specialty Supports and Services through the ██████████ as a developmentally disabled person

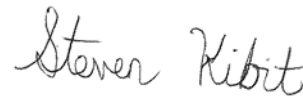
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED] improperly determined that Appellant did not meet the eligibility requirements for Medicaid Specialty Supports and Services through the [REDACTED] as a developmentally disabled person.

**IT IS THEREFORE ORDERED** that:

The [REDACTED] decision is **REVERSED** and it must initiate an assessment of Appellant for appropriate and necessary services.



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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]

SK/db

cc: [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.