

**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.** 2014-35389 CMH

██████████

██████████

██████████

Appellant

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**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 a 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. ██████████ Due Process Hearings Coordinator and attorney, represented Respondent ██████████). ██████████, Compliance Coordinator, and ██████████, Director of Communication Services, from the ██████████), testified as witnesses for Respondent.

**ISSUE**

Did the ██████████ properly deny Appellant's request for speech therapy 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. ██████████ 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 ██████████. (Testimony of ██████████).
3. On ██████████, the minor Appellant's mother completed an eligibility screening at ██████████ (██████████, ██████████, ██████████, ██████████, ██████████), the intake/access division within ██████████, and it was determined that Appellant met the general eligibility requirements for services through the ██████████ and ██████████. (Respondent's Exhibit A, page 1; Testimony of ██████████).

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4. [REDACTED] [REDACTED] then forwarded Appellant's case to [REDACTED] (Respondent's Exhibit A, page 1).
5. That same day, [REDACTED] staff telephoned Appellant's mother. (Respondent's Exhibit A, page 1).
6. During that telephone conversation, Appellant's mother indicated that she was only interested in speech therapy services for Appellant. (Respondent's Exhibit A, page 1).
7. The [REDACTED] staff member then incorrectly informed Appellant's mother that [REDACTED] did not provide speech therapy to children and no intake was scheduled or conducted. (Respondent's Exhibit A, page 1; Testimony of [REDACTED]).
8. On [REDACTED] [REDACTED] sent Appellant's mother written notice that Appellant's case would be terminated. (Petitioner's Exhibit 1, pages 7-8).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of Appellant in this matter. (Petitioner's Exhibit 1, pages 1-8).

**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*

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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.

Among the services that [redacted] can provide through the waiver are speech therapy services and, with respect to such services, the Medicaid Provider Manual (MPM) states:

**3.23 SPEECH, HEARING, AND LANGUAGE**

<b>Evaluation</b>	<b>Therapy</b>
Activities provided by a licensed speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete	Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO).  Therapy must be reasonable, medically

<p>evaluations.</p>	<p>necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided.</p> <p>Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a licensed speech-language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy. Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, licensed occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.</p>
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Moreover, with request to outpatient speech therapy, the MPM also states:

### **5.3 SPEECH THERAPY**

The terms speech therapy, speech-language pathology, speech-language therapy, and therapy are used to mean speech and language rehabilitation services and speech-language therapy.

MDCH covers speech-language therapy provided in the outpatient setting. MDCH only reimburses services for speech-language therapy when provided by:

- A speech-language pathologist (SLP) with a current Certificate of Clinical Competence (CCC).
- An appropriately supervised SLP candidate (i.e., in their clinical fellowship year [CFY]) or having completed all requirements but has not obtained a CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.
- A student completing his clinical affiliation under direct supervision of (i.e., in the presence of) an SLP having a current CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.

MDCH expects that all SLPs will utilize the most ethically appropriate therapy within their scope of practice as defined by Michigan law and/or the appropriate national professional association.

**For all beneficiaries of all ages**, speech therapy must relate to a medical diagnosis, and is limited to services for:

- Articulation
- Language
- Rhythm
- Swallowing
- Training in the use of an speech-generating device
- Training in the use of an oral-pharyngeal prosthesis
- Voice

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**For CSHCS beneficiaries** (i.e., those not enrolled in Medicaid; only enrolled with CSHCS), therapy must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing the care of the beneficiary.

Therapy must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess the beneficiary for deficits, develop a treatment program and provide therapy). Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family member, or caregiver) would not be reimbursed as speech therapy by MDCH.

For beneficiaries of all ages, therapy is **not** covered:

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.
- If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.

- If it is designed to facilitate the normal progression of development without compensatory techniques or processes.
- If continuation is maintenance in nature.
- If provided to meet developmental milestones.
- If Medicare does not consider the service medically necessary.

### **5.3.A. DUPLICATION OF SERVICES**

Some areas (e.g., dysphagia, assistive technology) may appropriately be addressed by more than one discipline (e.g., OT, PT, speech therapy) in more than one setting. MDCH does not cover duplication of services, i.e., where two disciplines are working on similar areas/goals. It is the treating therapist's responsibility to communicate with other practitioners, coordinate services, and document this in his reports.

### **5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES**

School-aged beneficiaries may be eligible to receive speech-language therapy through multiple sources. Educational speech is expected to be provided by the school system and is not covered by MDCH or CSHCS. Examples of educational speech include enhancing vocabulary, improving sentence structure, improving reading, increasing attention span, and identifying colors and numbers. Only medically necessary therapy may be provided in the outpatient setting. Coordination between all speech therapy providers should be continuous to ensure a smooth transition between sources.

Outpatient therapy provided to school-aged children during the summer months in order to maintain the therapy services provided in the school are considered a continuation of therapy services when there is no change in beneficiary diagnosis or function. Prior authorization is required before initiating a continuation of therapy.

If a school-aged beneficiary receives medically necessary therapy services in both a school setting (as part of an Individualized Education Plan [IEP]) and in an outpatient

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setting, coordination of therapy between the providers is required. Providers are to maintain documentation of coordination in the beneficiary's file.

*MPM, April 1, 2013 version,  
Outpatient Therapy Chapter, pages 18-20.*

Pursuant to the above policy, and as acknowledged by its witness ██████████, the ██████████ can provide speech therapy services to children in certain circumstances.

Accordingly, as also testified to by ██████████ staff erred by telling Appellant's representative that ██████████ did not provide speech therapy to children and by denying the request for services on that basis.

After the request for hearing, ██████████ and ██████████ reviewed the request for speech therapy services and determined that it still should be denied. However, that subsequent review does not change the fact that the denial at issue in this case was clearly improper. Moreover, the undersigned Administrative Law Judge will not address that subsequent decision as, due to the earlier error, no intake was ever scheduled or conducted in this case and the after-the-fact review appears to be missing at least some of the relevant documents submitted to ██████████ by Appellant's representative.

Therefore, given the improper basis for the denial, the ██████████ decision must be reversed and it must reassess Appellant's request for services.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the ██████████ improperly denied the request for speech therapy services.

**IT IS THEREFORE ORDERED** that:


The ██████████ decision is **REVERSED** and it must initiate a reassessment of Appellant's request for speech therapy services.

*Steven Kibit*

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

Date Signed: ██████████

Date Mailed: ██████████

  
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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.