

**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

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2014-35701 CMH

██████████

██████████

**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 and testified on Appellant's behalf. ██████████ Appellant's father was also present but did not testify.

██████████ appeared on behalf of the Department. ██████████, Clinical Supervisor, ██████████ (CMH or Department), testified on behalf of the Department.

**ISSUE**

Did the CMH fail to follow ██████████ Decision and Order dated ██████████

**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 Medicaid beneficiary receiving services through ██████████. (Exhibit A, 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 ██████ year old Medicaid beneficiary, born ██████████. Appellant is diagnosed with Septo-Optic Dysplasia, Severe Dysfunction of the Hypothalamus Pituitary Adrenal Cortex Axis, Hypopituitarism, secondary grown hormone deficiency, Asperger's Disorder, and Raynaud's Syndrome. It is also believed that Appellant has an

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under-developed Corpus Callosum. Appellant is legally blind and has significant behavioral problems. ██████████ Decision and Order and testimony).

4. On ██████████, Administrative Law ██████████ issued a Decision and Order finding that the Appellant was eligible for ██████ to ██████ CLS hours per week. The CMH representative proffered that CMH would have received a copy of the Judge's Decision and Order on or about ██████████. (Testimony).
5. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request from the Appellant for a rehearing of ██████████ Decision and Order dated ██████████. A rehearing was not ordered; rather a new hearing was scheduled based upon the allegation in the Appellant's request for a rehearing that CMH was not initiating/following the Judge's order. (Exhibit 4).
6. On ██████████, in an effort to comply with the Judge's Order, CMH sent the Appellant's parents a letter with an Individual Plan of Service Amendment reflecting the Judge's order that the Appellant was eligible for ██████ to ██████ CLS hours per week. (Exhibits A, B and testimony).
7. On ██████████, in response to an e-mail from the Appellant's parents seeking to have CMH follow the Judge's Order, CMH sent Appellant's parents another letter notifying them CMH could not provide the additional services ordered by the Judge until the parents provided consent which could be accomplished by signing the Individual Plan of Service Amendment. (Exhibit C and testimony).
8. The published policy by the ██████████ clearly states that: "It is the policy of the ██████████ that informed consent shall be obtained from the recipient, or applicable parent or the guardian for participation in mental health services . . . ." [Exhibit D, p. 1]. The policy further states that the consent required is either a written agreement executed by the recipient, a minor recipient's parent with legal custody, or a recipient's legal representative with authority to execute a consent. Verbal agreement for consent to an individual plan of service is also permitted if witnessed and documented by an individual other than the person providing treatment. [Exhibit D, p. 1].
9. MCL 330.1100a(19) states: "(19) "Consent" means a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment."

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10. Mich Admin Code R 330.7003(3) states: "Informed consent shall be reobtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected."

**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

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(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's Clinical Supervisor established that on ██████████, in an effort to comply with the Judge's Order dated ██████████, CMH sent the Appellant's parents a letter along with an Individual Plan of Service Amendment reflecting the Judge's order that the Appellant was eligible for ██████ to ██████ CLS hours per week. [See Exhibits A & B]. The Clinical Supervisor stated that CMH must have parental consent before making a change in the minor Appellant's treatment plan. Accordingly, the parents were sent the Individual Plan of Service Amendment to obtain their written signature to show their approval/consent to the plan amendment. Another letter was sent on ██████████ advising the Appellant's parents that written consent was needed from them to put the plan amendment into effect. CMH established that State Law and their own written policy require proper parental consent before they can change a previously approved Individual Plan of Service. [See Exhibit D; MCL 330.1100a(19) and Mich Admin Code R 330.7003(3)]. The Clinical Supervisor stated the Appellant's parents never provided written consent to the Individual Plan of Service Amendment reflecting the Judge's order. She further stated that towards the end of ██████████ she wrote on the Individual Plan of Service Amendment "refused to sign" to indicate that the parents had not signed the plan amendment. [See Exhibit A, p. 10 of 10].

Appellant's mother testified that they did not receive the Individual Plan of Service Amendment admitted as Exhibit A until it was sent to them by ██████████ as a part of the exhibits CMH wanted to use for the administrative hearing. She also said she was never offered an Individual Plan of Service Amendment to sign for ██████ weeks after they had received the Judge's order so she filed for a rehearing. Appellant's mother said she did not contact CMH about the plan amendment after she filed for a hearing, because she was upset and wanted a judge to hear what she was going through with ██████████ and did not want to sign the amendment at that time. Appellant's mother did acknowledge that they had received CMH's letters dated ██████████ and ██████████ which referenced the Individual Plan of Service Amendment reflecting the Judge's order that the Appellant was eligible for ██████ to ██████ CLS hours per week and the need for written consent. Despite the letters, no written consent was ever given for the additional CLS hours. Furthermore, the Appellant's parents did not notify any one prior to the hearing that they had not received the Individual Plan of Service Amendment prior to it being sent to them by ██████████

Based on the evidence presented, Appellant has failed to meet her burden of proof to show, by a preponderance of evidence, that CMH erred by failing to follow ██████████

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Decision and Order dated [REDACTED] Rather, the preponderance of the reliable evidence shows that CMH prepared and submitted an Individual Plan of Service Amendment complying with [REDACTED] order to the Appellant's parents for their written consent, as required by State Law and the CMH's written policy, in order to put the additional CLS into effect for the Appellant. If the Appellant's parents wanted the additional CLS hour to be put into effect they simply needed to sign the plan amendment, which they failed to do.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH acted properly by preparing and submitting to the Appellant's parents an Individual Plan of Service Amendment that complied with [REDACTED] order for their written consent, as required by State Law and CMH's written policy.

**IT IS THEREFORE ORDERED** that:

The CMH action is **AFFIRMED**.

*William D Bond*

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William D. Bond  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.