

**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. 2014-405 REH  
Case No. ██████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to a ██████████  
██████████ Order Granting Request to Vacate Order of Dismissal issued by Supervising  
Administrative Law Judge (ALJ) ██████████. Judge ██████████' Order vacated  
an Order of Dismissal entered on ██████████ by ALJ ██████████.

After due notice, a hearing was held on ██████████. Attorney ██████████, Legal  
Director, ██████████. appeared on behalf of Appellant.  
Appellant appeared as a witness as did Appellant's psychologist, Dr. ██████████.

██████████, Fair Hearings Officer, represented ██████████,  
the mental health authority for ██████████ County Michigan (CMH or WCHO).

**ISSUE**

Did CMH properly determine that Appellant was not a person with a  
developmental disability (DD)?

**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 ██████████.  
(Exhibit A, p 4; Testimony)
2. ██████████ is under contract with the Department of Community Health (MDCH) to  
provide Medicaid covered services to people who reside in the CMH service  
area. (Testimony)
3. Appellant is diagnosed with autism, pervasive developmental disorder NOS,  
mood disorder NOS, and posttraumatic stress disorder. (Exhibit A, p 4;  
Testimony)

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4. As of ██████████ Appellant was prescribed the following medications: latuda 120 mg/day, trileptal 600 mg bid, and adderral. In the past, Appellant has been treated with lithium, Haldol, Cogentin, Zoloft, Risperdal, Geodon, Abilify, clonidine, trazodone, Topamax. (Exhibit A, p 5; Testimony)
5. Appellant is currently receiving adult services through WCHO as a person with a Serious Mental Illness (SMI). (Exhibit A, p 10; Testimony)
6. Appellant lives with his mother. (Exhibit A, p 9; Testimony)
7. Appellant graduated from AIM school in ██████████, a school for high functioning autistic children. Appellant also attended summer classes at AIM and Appellant is currently enrolled at ██████████ Community College, where he studies music production and engineering. (Exhibit A, p 6; Testimony)
8. Appellant's IQ has been determined to be in the average to above-average range. (Exhibit A, pp, 6; 18)
9. A previous determination by ██████████ that Appellant was not a person with a DD was affirmed by ALJ ██████████ in ██████████ and the ALJ's Decision was upheld on appeal to Circuit Court by Judge ██████████ on ██████████. (Exhibit A, pp 26-48)
10. On or about ██████████, Appellant's mother sought DD services for Appellant after Appellant aged out of the Children's Waiver Program (CWP). (Exhibit A, p 17; Testimony).
11. After an assessment, ██████████ notified Appellant via Adequate Action Notice dated ██████████ that the services he applied for were denied because Appellant did not meet the Michigan Mental Health Code (MMHC) definition of a person with a developmental disability (DD). (Exhibit A, pp 11-12, 17-18; Testimony)
12. In ██████████, Appellant underwent a psychological examination performed by Dr. ██████████, ██████████, for a second opinion, after ██████████ denied Appellant services as a person with a DD. Dr. ██████████ had a face to face meeting with Appellant and his mother, she reviewed Appellant's records from ██████████, and she consulted with Appellant's providers. Dr. ██████████ determined that Appellant was not a person with a DD because she could not find that he had substantial functional limitations in 3 or more areas of major life activity. Dr. ██████████ did find that Appellant was eligible for services as a person with a SMI. (Exhibit A, pp 4-10)
13. On ██████████, MAHS received a Request for Hearing from Appellant challenging the determination that he was not a person with a DD. (Exhibit 3)
14. On ██████████, ██████████ notified Appellant via Adequate Action Notice when his services as a person with a SMI would begin. (Exhibit A, pp 2-3)

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15. Following a hearing on [REDACTED], ALJ [REDACTED] entered an Order of Dismissal, finding that there had been no reduction, suspension, termination or denial of a Medicaid covered service and, as such, jurisdiction for a Medicaid Fair Hearing was lacking. (See Order of Dismissal, dated August 29, 2013)
16. On [REDACTED], Petitioner filed a Motion for Reconsideration. (See Motion for Reconsideration and Brief in Support, dated [REDACTED])
17. On [REDACTED], Supervising Administrative Law Judge (ALJ) [REDACTED] issued an Order Granting Request to Vacate Order of Dismissal. (See Order dated [REDACTED])

**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:

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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 sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. ██████████ County CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible.

The Michigan Mental Health Code definition of developmental disability was utilized by ██████████ to determine that Appellant was not eligible for ██████████ services. That definition provides, in pertinent part:

(21) "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

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services that are of lifelong or extended duration and are individually planned and coordinated.

*MCL 330.1100a*

██████████'s representative argued that Appellant is not a person with a DD because he goes to college and he does not present himself as a person with a DD. ██████████'s representative pointed out that a previous determination that Appellant did not have a DD was upheld by ALJ ██████████ in ██████████ (following 9 hearings) and the Decision was upheld on appeal to Circuit Court by Judge ██████████ on ██████████. (See Exhibit A, pp 26-48). ██████████'s representative pointed to the initial assessment of Appellant completed by DD service coordinator ██████████ and the second opinion completed by Dr. ██████████ as evidence that Appellant is not a person with a DD.

██████████'s representative also indicated that the services and supports in the Medicaid Provider Manual (MPM) do not delineate between persons with DD and SMI, except for the Children's Waiver and the Habilitation and Supports Waiver. ██████████'s representative indicated that Appellant has full access to services as a person with a SMI and it will make no difference in the services he receives if he is designated as a person with a DD.

Appellant's psychologist testified that she has been a licensed clinical psychologist since ██████████ and has known Appellant since he was ██████████ years old. Appellant's psychologist indicated that DD is a diagnosis typically made in childhood and that she has experience working with persons on the autism spectrum. A brief biological sketch of Appellant's psychologist's education and work history was entered into the record and Appellant's psychologist was qualified as an expert witness. (Exhibit 1). Appellant's psychologist testified that she first met Appellant when he came to the DD clinic at ██████████ at the age of ██████████, where he was diagnosed with autism. Appellant's psychologist indicated that autism is a lifetime disability and that while Appellant has made tremendous gains over the years, he still has many needs.

Appellant's psychologist testified that she reviewed the psychological assessment prepared by Dr. ██████████ and noted that Dr. ██████████ noted under diagnoses that Appellant is diagnosed with "pervasive developmental disorder", a generic category of DD. Appellant's psychologist also pointed out that Dr. ██████████ indicated in the report that she could not clearly define 3 or more areas of substantial limitations in major life activities, not that 3 or more areas did not exist. Appellant's psychologist also indicated that Mr. ██████████, who completed the initial DD assessment with Appellant, did find that Appellant had substantial limitations in the areas of capacity for independent living and economic self-sufficiency.

Appellant's psychologist opined that Appellant does have a substantial limitation in the area of self-direction. Appellant's psychologist indicated that this limitation is evidenced by the fact that Appellant is unable to get around on his own and cannot drive, that Appellant has poor attentional focus, and that Appellant has goals and desires, but has difficulty in following through on those desires. As an example, Appellant's psychologist pointed to Appellant's current attendance at community college - Appellant's psychologist indicated that while

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Appellant is in community college, getting him there required considerable cajoling and assistance from others.

Appellant's psychologist also opined that Appellant has a substantial limitation in the area of self-care, mostly due to his sensory defensiveness. Appellant's psychologist indicated that Appellant has difficulty brushing his teeth and he avoids bathing and doing laundry because of this defensiveness. Appellant's psychologist also indicated that Appellant has night time enuresis and also soils himself inappropriately because he tries to avoid having a bowel movement. Appellant's psychologist also testified that Appellant is overweight, pre-diabetic and needs prompting to take his medications.

Appellant's psychologist testified that while Appellant is very verbal and bright and wants to look good to outsiders, he cannot sustain the appearance long-term. Appellant's psychologist indicated that community college is very difficult for Appellant, especially socially, although Appellant is very bright and musically inclined. Appellant's psychologist testified that Appellant's attendance at community college does not negate the fact that he has a DD.

Appellant's psychologist also referred to progress notes from Appellant's caregivers (Exhibit 2), which show that staff helps Appellant with chores, eating, doing laundry, and picking out food. Appellant's psychologist argued that this type of coaching supports Appellant's substantial limitations in the areas of self-direction and self-care.

Based on the competent and material evidence on the whole record, Appellant has failed to prove, by a preponderance of evidence, that he met the Michigan Mental Health Code (MMHC) definition of a person with a developmental disability. While Appellant's psychologist opined that Appellant has substantial limitations in the areas of self-direction and self-care, that opinion is not sufficient to overcome the burden of proof. As indicated earlier, Appellant challenged this very same issue back in ██████ and ██████, and ALJ ██████ upheld ██████'s determination that Appellant is not a person with a DD. That decision was also appealed to ██████, and the decision was upheld.

Here, Appellant has not demonstrated that there has been any substantial change in his condition since the prior determination and the evidence presented at this hearing is not convincing. Appellant may have some limitations in the area of self-care, but those limitations are not substantial. Appellant is able to dress, bathe, toilet and groom himself on a daily basis. Even though Appellant may have the occasional night time enuresis, and occasionally soil himself inappropriately, Appellant has the ability to toilet himself on his own. It is just as likely, if not more likely, that Appellant's limitations in the area of self-care are caused by his mental illness. Furthermore, while Appellant may have some limitations in the area of self-direction, those limitations are not substantial. Appellant has done well in school and he is currently attending community college. While Appellant may need assistance and cajoling to pursue his goals, there is also evidence in the record that if Appellant wants something bad enough, he can be very persistent in getting it. Again, it is more likely that Appellant's limitations in the area of self-direction are due to his diagnosed mental illnesses.

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It also bears pointing out that the fact that Appellant is diagnosed with pervasive developmental disorder is irrelevant to the determination of whether Appellant meets the MMHC definition of a person with a DD. As indicated above, to meet the MMHC definition of a person with a DD, it must be shown that the person has a substantial limitation in 3 or more areas of major life activity. Here, Appellant has failed to do that. It also bears pointing out that, as Appellant's psychologist admits, DD is generally diagnosed in early childhood and here, Appellant, as a [REDACTED] year old, has never been determined to be a person with a DD. While Appellant does fall on the autism spectrum, that diagnosis alone is not enough to meet the MMHC definition of DD.

Based on the evidence presented, Appellant does not meet the MMHC definition of a person with a developmental disability and [REDACTED]'s determination was proper.

**DECISION AND ORDER**

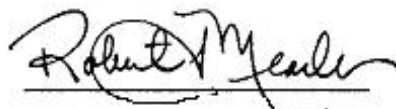
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

Appellant does not meet the Mental Health Code eligibility requirements for services provided by CMH for persons with a developmental disability.

Appellant continues to meet the eligibility requirements for services provided by CMH for a person with a serious mental illness.

**IT IS THEREFORE ORDERED** that:

The CMH's decision is AFFIRMED.



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

cc:

[REDACTED]

[REDACTED]

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Date Signed: February 10, 2014

Date Mailed: February 10, 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.