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:

[redacted]

Docket No. 14-015313 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared on his own behalf. [redacted], friend, appeared as a witness.

[redacted], Manager, Due Process, appeared on behalf of [redacted] (CMH or the Department). [redacted], Psychologist, Utilization Care Manager, appeared as a witness for the Department.

ISSUE

Does the Appellant meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH as someone with a developmental disability or serious mental illness?

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 [redacted] year-old Medicaid beneficiary, born [redacted], who is diagnosed with depression, social phobia, and cannabis dependence. (Exhibit A, pp 1, 7, 15; Testimony)

2. Appellant resides in a ¾ house following his release from prison, where he was incarcerated from [redacted] to [redacted] following a CSC conviction. Appellant reports feelings of anxiety around large groups of people as he is reminded of the violence he witnessed in prison. (Exhibit A, p 15; Testimony)

3. Appellant does have family in the area, but he is not allowed visitors at the ¾ house and he is only allowed out of the house for scheduled, pre-approved appointments. Currently, those appointments only involve visits to doctors and to his parole office. (Exhibit A, Testimony)

4. Appellant is enrolled in a Healthy Michigan Plan through HealthPlus Partners. (Exhibit A, p 20)

5. On [redacted], Appellant appeared at the CMH offices seeking services. An Access Screening was completed by CMH, which concluded that Appellant was not eligible for services because he did not have a developmental disability or a serious mental illness, as defined by the Michigan Mental Health Code. (Exhibit A, pp 1-16)

6. The Michigan Mental Health Code, Medicaid Provider Manual, and the MDCH/CMHSP Mental Health Supports and Services Contract specify that the CMH is responsible for treating the most severe forms of mental illness and that the Medicaid Health Plans are responsible for treating mild to moderate conditions. (Exhibit A; Testimony)

7. On [redacted], CMH sent Appellant a notice indicating that the services he requested were denied because: "You do not meet criteria for someone with a severe and persistent mental illness or developmental disability in need of specialty services and supports. It has been determined that your mental health needs can be met through your Medicaid Health Plan." The notice informed Appellant of his right to a fair hearing. (Exhibit A, pp 17-19)

8. On [redacted], the Michigan Administrative Hearing System (MAHS) received Appellant's request for an Administrative Hearing. (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—

Under approval from the Center for Medicaid and Medicaid Services (CMS) the Michigan Department of Community Health (MDCH) operates a section 1915(b) waiver called the Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the MDCH to provide services under the Managed Specialty Service and Supports Waiver and other State Medicaid Plan covered services. CMH must offer, either directly or under contract, a comprehensive array of services, as specified in Section 206 of the Michigan Mental Health Code, Public Act 258 of 1974, amended, and those services/supports included as part of the contract between the Department and CMH.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility, Section 1.6* makes the distinction between the CMH responsibility and the Medicaid Health Plan (MHP) responsibility for Medicaid specialized ambulatory mental health benefits. The Medicaid Provider Manual provides:

> 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.

The following table has been developed to assist health plans and PIHPs in making coverage determination decisions related to outpatient care for MHP beneficiaries. Generally, as the beneficiary's psychiatric signs, symptoms and degree/extent of functional impairment increase in severity, complexity and/or duration, the more likely it becomes that the beneficiary will require specialized services and supports available through the PIHP/CMHSP. For all coverage determination decisions, it is presumed that the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders published by the American Psychiatric Association.

In general, MHPs are responsible for outpatient mental health in the following situations:	**In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:**
□ The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal clinical (self/other harm risk) instability. □ The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.	□ The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to perform daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills). □ The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse. □ The beneficiary has been treated by the MHP for mild/moderate symptomatology and temporary or limited functional impairments and has exhausted the 20-visit

	maximum for the calendar year. (Exhausting the 20-visit maximum is not necessary prior to referring complex cases to PIHP/CMHSP.) The MHP's mental health consultant and the PIHP/CMHSP medical director concur that additional treatment through the PIHP/CMHSP is medically necessary and can reasonably be expected to achieve the intended purpose (i.e., improvement in the beneficiary's condition) of the additional treatment.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
July 1, 2014, p 3

"Serious mental illness" is defined in the Mental Health Code as follows:

> 330.1100d Definitions; S to W.
> Sec. 100d.
>
> * * * *
>
> (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.
>
> * * * *

MCL 330.1100d(3)

Developmental disability is defined in the Mental Health Code as follows:

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

MCL 330.1100a

CMH's psychologist testified that she reviewed the Access Screen completed on [redacted] and agreed with the conclusion that Appellant was not eligible for services through CMH. CMH's psychologist indicated that CMH services are for persons who have severe and persistent mental illnesses and that Appellant did not meet those criteria. CMH's psychologist testified that Appellant showed signs of mild to moderate depression and anxiety, and possibly mild to moderate post-traumatic stress syndrome, and that his symptoms could be treated through outpatient therapy and medication reviews covered by his Medicaid Health Plan. CMH's psychologist indicated that she did not note any evidence of severe aggression or mood swings with Appellant, which would be evidence of a more severe mental illness. CMH's psychologist explained that the case management services Appellant was seeking are designed to link and coordinate consumers with services when those consumers have mental illnesses so severe they are unable to link and coordinate to those services on their own. Here, CMH's psychologist indicated that a

case manager could not help Appellant with his issues of depression and anxiety, but that those conditions could be treated through outpatient therapy and medication management, both available through his health plan.

Appellant testified he feels he needs a case manager to help him deal with his fear of being in the public. Appellant indicated that those fears stem from the violence he observed while incarcerated. Appellant testified that he does not feel safe leaving the ¾ house or taking public transportation. Appellant explained that the ¾ house is similar to being incarcerated, although he is able to leave between 7:00 am and 12:00 pm, Monday through Friday, for prearranged and preapproved outings. At this time, Appellant explained that he has only been approved to go to the corner store, to see his parole officer, and to see his doctors. Appellant testified that he wanted to regain the maximum level of functioning in society that he enjoyed before his incarceration. Appellant indicated that he does have a primary care physician, receives food stamps, has a Medicaid Health Plan, but is not seeking work as he is seeking disability. Appellant testified that his friend Susan is his only informal support because his family is not allowed to visit him at the ¾ house and he cannot visit them during his release time.

In this case, the CMH applied the proper eligibility criteria to determine whether Appellant was eligible for Medicaid covered mental health services and properly determined he is not because he is not a person with a developmental disability or serious mental illness. Following an eligibility assessment, CMH determined that Appellant lacked a qualifying diagnosis of severe mental illness or developmental disability and that Appellant's symptoms were mild to moderate. As indicated above, the Medicaid Provider Manual provides that the CMH is responsible for treating the most severe forms of mental illness and that the Medicaid Health Plans are responsible for treating mild to moderate conditions. Here, Appellant has a Medicaid Health Plan and can receive the services he needs through that plan. Should Appellant's condition worsen, he is free to request another assessment. Accordingly, Appellant does not meet the eligibility criteria for Medicaid Specialty Supports and Services through CMH.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly determined that the Appellant does not meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

cc: [redacted]

RJM/[redacted]

Date Signed: [redacted]

Date Mailed: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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.