

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-000068 CMH

Case No. ██████████

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 telephone hearing was held on ██████████. ██████████, Appellant's parents, appeared and testified on Appellant's behalf.

██████████, Chief Operating Officer, Fair Hearing Officer, ██████████ County Community Mental Health Authority (CMH), represented the Department. ██████████, Case Manager; ██████████, Assistant Supervisor Care Coordination; and ██████████, Regional Customer Service Manager, appeared as witnesses for the Department.

ISSUE

Did the CMH properly terminate Appellant's services through the ██████████ and Community-Based Services Waiver Program (CWP)?

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 ██████████, who has been receiving services through CMH. (Exhibit 6, p 1; Testimony).
2. CMH is a contractor of the Michigan Department of Community Mental Health (MDCH) pursuant to a contract between these entities. (Exhibits 1, 2, 7, 10; Testimony)
3. CMH is required to provide Medicaid covered services to Medicaid eligible clients it serves. (Exhibits 1, 2, 7, 10; Testimony)

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4. Appellant has been diagnosed with mild cerebral palsy, orbital hypoplasia bilaterally, retinal detachments in both eyes, retinopathy of prematurity – fifth state, periventricular leukomalacia – right side of brain, seizures, scoliosis, neurogenic bladder, brochopulmonary dysplasia, and renal failure. (Exhibit 6, p 1; Testimony).
5. On [REDACTED], Appellant’s parents and the CMH Case Manager completed the MDCH/Medicaid Children’s Waiver Program Pre-Screen Form and Packet. During the process of completing the application, CMH’s Case Manager provided education to Appellant’s parents regarding the requirements of the CWP. The application packet was submitted to MDCH for review and, based on his scoring, Appellant was placed on the Children’s Waiver Weighted Priority List. (Exhibit 6; Testimony)
6. The CWP has only 464 slots available State wide and only 413 children can be served under the program at one time. (Exhibit 1, pp 27-28; Testimony).
7. Between [REDACTED] and [REDACTED], Appellant became the child with the most severe needs on the MDCH Children’s Waiver Weighted Priority List and was approved for the Children’s Waiver. CMH completed the Home and Community Based Waiver Certification form, which indicated that Appellant met the eligibility criteria for the Children’s Waiver because he was severely or profoundly retarded, would require placement in an intermediate care facility for the mentally retarded (ICF/MR), [now intermediate care facility for individuals with intellectual disabilities (ICF/IID)], absent waiver services, and required active treatment. (Exhibit 7; Testimony).
8. On [REDACTED], a pre-planning meeting was held with Appellant’s parents and the CMH Case Manager. At the meeting it was discussed that the family would seek Respite and Community Living Supports (CLS) services for Appellant under the Children’s Waiver. CMH’s Case Manager also provided education regarding the requirements of the CWP. (Exhibit 8; Testimony).
9. On [REDACTED], CMH’s Case Manager completed a Respite Care Needs Assessment, which indicated that Appellant was approved for \$ [REDACTED] in respite for the period of [REDACTED] to [REDACTED]. (Exhibit 9; Testimony)
10. On [REDACTED] a Person Centered Plan (PCP) meeting was held with Appellant’s parents and CMH staff. During the meeting, CMH staff provided further education to Appellant’s parents regarding the requirements for the CWP. Services placed in the PCP included a Health Assessment (by an RN), an Occupational Therapy Evaluation, Physical Therapy Evaluation, Targeted Case Management, CLS, and Respite. (Exhibit 11; Testimony)

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11. Between [REDACTED] and [REDACTED], CMH staff worked with Appellant's parents to find and place appropriate staff for both CLS and Respite; however, for a number of reasons, Appellant and his family did not receive any CLS or Respite services during that time period. CMH staff encouraged Appellant's parents to engage in services and were willing to allow Appellant's family to use providers of their choice, so long as those providers met the necessary qualifications and requirements, such as background checks, recipients rights training, CPR/first aid, etc. During this period, Appellant's parents never committed to services. Appellant's parents cancelled appointments, were indecisive, did not put forth providers who met all qualifications, and were not comfortable with providers put forth by CMH who did meet qualifications. (Exhibits 14-45; Testimony)
12. On [REDACTED], CMH's Case Manager met with Appellant's family and informed them that Appellant did not meet eligibility criteria for recertification under the CWP because Appellant had not received a Children's Waiver service once per month since initial certification. (Exhibit 44; Testimony)
13. On [REDACTED], CMH's Case Manager spoke to Appellant's parents again regarding Appellant failing to meet eligibility requirements for continued enrollment in the CWP. During the conversation, Appellant's father informed CMH's Case Manager that the family never really wanted services; they simply wanted to use the CWP as a mechanism for Appellant to qualify for Medicaid. (Exhibit 46; Testimony)
14. On [REDACTED], CMH provided an Advance Negative Action Notice to Appellant's parents informing them that CWP would be terminated effective [REDACTED]. The Notice indicated specifically that Appellant did not meet criteria for recertification under the CWP because he was not at risk of being placed in an ICF/MR without CWP services, evidenced by the fact that he had gone an entire year without receiving any CWP services. The Notice also indicated that Appellant did not meet eligibility criteria for the CWP because he had not received at least one Children's Waiver service per month since his initial approval for the CWP. (Exhibit 47; Testimony)
15. On [REDACTED], CMH's Care Coordinator spoke to Appellant's father regarding continuing Appellant's services while the case was pending. Appellant's father informed CMH's Care Coordinator that the family did not want services continued while the appeal process was pending. (Exhibit 49; Testimony)
16. On [REDACTED], MAHS received Appellant's request for an Administrative Hearing. (Exhibit A).

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

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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.

Among the programs administered as part of that act is the [REDACTED] and Community Based Services Waiver Program (CWP) and, with respect to the CWP, the applicable version of the Medicaid Provider Manual (MPM) states:

SECTION 14 – [REDACTED] AND COMMUNITY-BASED SERVICES WAIVER (CWP)

The [REDACTED] and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

The Children's Waiver is a fee-for-service program administered by the CMHSP. The CMHSP will be held financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by the CMHSP and exceed the Medicaid fee screens or amount, duration and scope parameters.

Services, equipment and Environmental Accessibility Adaptations (EAAs) that require prior authorization from MDCH must be submitted to the CWP Clinical Review Team at MDCH. The team is comprised of a physician, registered nurse, psychologist, and licensed master's social worker with consultation by a building specialist and an occupational therapist.

14.1 KEY PROVISIONS

The CWP enables Medicaid to fund necessary home- and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

The CMHSP is responsible for assessment of potential waiver candidates. The CMHSP is also responsible for referring potential waiver candidates by completing the CWP "pre-screen" form and sending it to the MDCH to determine

priority rating.

Application for the CWP is made through the CMHSP. The CMHSP is responsible for the coordination of the child's waiver services. The case manager, the child and his family, friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in the Individual Plan of Services (IPOS). The IPOS must be reviewed, approved and signed by the physician.

A CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

14.2 ELIGIBILITY

The following eligibility requirements must be met:

- The child must have a developmental disability (as defined in Michigan state law), be less than 18 years of age and in need of habilitation services.
- The child must have a score on the Global Assessment of Functioning (GAF) Scale of 50 or below.
- The child must reside with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian for that child under the laws of the State of Michigan, provided that the relative is not paid to provide foster care for that child.
- The child is at risk of being placed into an ICF/IID facility because of the intensity of the child's care and the lack of needed support, or the child currently resides in an ICF/IID facility but, with appropriate community support, could return home.
- The child must meet, or be below, Medicaid income and asset limits when viewed as a family of one (the parent's income is waived).

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- The child's intellectual or functional limitations indicate that he would be eligible for health, habilitative and active treatment services provided at the ICF/IID level of care. Habilitative services are designed to assist individuals in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings. Active treatment includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment is directed toward the acquisition of the behaviors necessary for the beneficiary to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status. (Emphasis added by ALJ)

*Medicaid Provider Manual
Mental Health/Substance Abuse Chapter
October 1, 2014, pp 85-86*

CMH's Chief Operating Officer testified that the termination of Appellant from the CWP was proper under criteria found in the Medicaid Provider Manual. CMH's Chief Operating Officer indicated that the CWP has only 464 slots available State wide and only 413 children can be served under the program at one time. (Exhibit 1, pp 27-28). CMH's Chief Operating Officer reviewed what services are covered under the CWP and pointed out that some of the services are also covered under State Plan services. CMH's Chief Operating Officer testified that the CWP requires a pre-screening process, which was completed with the family here, as well as an annual recertification. CMH's Chief Operating Officer testified that in the instant case, at recertification, it was determined that Appellant no longer met the eligibility criteria for the CWP because he was no longer at risk for placement in an ICF/MR (now ICF/IID) and he had not received at least one CWP service monthly during the past year. CMH's Chief Operating Officer testified that an Advance Negative Action Notice was sent to Appellant's parents and that the parents were notified that they could still receive targeted case management and respite through CMH under a different funding source.

Appellant's Case Manager testified that she provided Appellant's parents with education regarding the requirements of the CWP from the beginning of the application process and

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throughout the time she served as Appellant's Case Manager. Appellant's Case Manager indicated that she completed a pre-screening application with Appellant's parents for the CWP in ██████████ and that Appellant was approved for the program in ██████████. Appellant's Case Manager testified that a Plan of Service was then developed and services were authorized. Appellant's Case Manager indicated that a Nursing Assessment was completed, but Appellant did not meet the criteria for Private Duty Nursing. Appellant's Case Manager indicated that Appellant did receive Targeted Case Management monthly, but that there was difficulty finding a provider for both CLS and Respite. Appellant's Case Manager testified that the family rejected some proposed providers and ultimately cancelled CLS. Appellant's Case Manager indicated that she tried to be patient with the family and their choices, but she knew that Appellant risked being disenrolled from the CWP if services were not being utilized. Appellant's Case Manager testified that Appellant's father ultimately informed her that the family never wanted services through CWP; they only wanted the CWP in place so that Appellant would be eligible for medical coverage under Medicaid. Appellant's Case Manager testified that the family ultimately asked that CLS services be terminated effective in ██████████. With regard to Respite, Appellant's Case Manager testified that she identified three possible providers, but the family did not accept any of them. Appellant's Case Manager testified that the family wanted other family members to provide respite, but that none of the family members completed the process to become a respite provider prior to Appellant's CWP case being closed. Appellant's Case Manager testified that Appellant's mother's sister did eventually submit all documents to be a respite provider, but that her background check had not been completed when CWP services were terminated.

CMH's Care Coordinator testified that she also provided education to Appellant's parents about the requirements for the CWP throughout the process. CMH's Care Coordinator indicated that CMH discussed provider qualifications, training requirements, and background checks with the family. CMH's Care Coordinator testified that the family informed her in the summer of ██████████ that they wanted to keep the CWP in case they needed the services in the future, but she informed them that the suggestion was not an appropriate use of the CWP. CMH's Care Coordinator explained they could be disenrolled from the program if they were not using the services and that there were other children who were waiting to use the program. CMH's Care Coordinator testified that CMH tried to work with Appellant's family, but because the family had always provided all care for Appellant, they were reluctant to let outsiders care for Appellant. CMH's Care Coordinator indicated that Appellant's family apologized for cancelling appointments and not moving forward with services. CMH's Care Coordinator reviewed the qualifications of CLS workers from the MPM and indicated that all CLS workers offered to Appellant met those qualifications. CMH's Care Coordinator testified that Appellant is not currently receiving services because, after the Negative Action Notice was sent to Appellant's parents, they informed CMH that they did not want any services until the appeal process was completed.

Appellant's father testified that not all of the delays in beginning services were due to actions by the family. Appellant's father pointed out that CMH did not even begin to

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explore CLS providers until [REDACTED] and that the process was then put on hold by the family because of difficulties with their Medicaid coverage. Appellant's father indicated that because of the delays they did not have an entire year where CWP services were offered or available. Appellant's father testified that the issue with Medicaid eligibility alone probably took at least two months to deal with. Appellant's father testified that it would not have been possible for the family to receive CWP services every month for the year Appellant was enrolled in the program. Appellant's father also indicated that the family was not notified until [REDACTED] that they were at risk of losing eligibility for the CWP because they had not been using a CWP service every month. Regarding Appellant being at risk for ICF/IID placement, Appellant's father indicated that the family has been caring for Appellant at home his whole life and that nothing changed during the year he was enrolled in the CWP. Appellant's father questioned how he could no longer be at risk for ICF/IID placement in [REDACTED] when he was found to be at risk in [REDACTED]. Appellant's father indicated that he and his wife also have health issues, which places Appellant at risk for ICF/IID placement.

In response, CMH's Regional Customer Service Manager indicated that risk is related to treatment and if there is no treatment then it naturally follows that there is no risk. CMH's Regional Customer Service Manager testified that Appellant appeared to be at risk for ICF/IID placement in the beginning, but after a whole year passed with no services, it could no longer be said that he was at risk for such placement. CMH's Regional Customer Service Manager indicated that the fact that Appellant has been disenrolled from the CWP does not mean that he cannot reapply for the CWP when the family is ready to accept services.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that CMH's decision to terminate him from the CWP was improper. As indicated above, to remain eligible for the CWP, a participant must be at risk for placement in an ICF/IID without CWP services and must receive at least one CWP service per month while enrolled in the program. Here, Appellant did not receive any CWP services during the year he was enrolled in the program so he failed to meet the above criteria.

While Appellant's parents tried to shift part of the blame for the failure of Appellant to receive CWP services during the year he was enrolled in the program to the CMH, the evidence does not support this argument. It is clear from the evidence that Appellant's family was not ready to accept services from persons outside of the immediate family during the period Appellant was enrolled in the program. Appellant's father admitted that the family only applied for CWP in order to get Medicaid coverage for Appellant and the family has refused services through other funding sources since Appellant was disenrolled from the CWP. This is not to suggest that Appellant's parents have done anything wrong. On the contrary, they should be commended for the care that they have provided, and continue to provide, to their son. Unfortunately, under the clear policy for the CWP, if someone is not receiving services they will be disenrolled from the program. It is clear from the evidence that the CMH did everything it could to encourage Appellant's parents to

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accept services and any delays attributable to the CMH were negligible. Accordingly, it is concluded that the CMH properly terminated Appellant from the CWP.

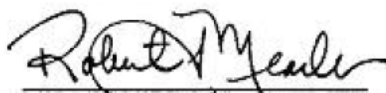
DECISION AND ORDER

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

The CMH properly determined that Appellant did not meet the eligibility requirements for recertification under the CWP.

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:



RJM 

Date Signed: 

Date Mailed: 

***** 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.