**STATE OF MICHIGAN**
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**
**FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

**IN THE MATTER OF**:

[redacted],

Docket No. 14-011116 CMH
Case No. [redacted]

Appellant
_____/

## DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq*. upon the request for hearing filed on Appellant's behalf.

After due notice, a hearing commenced on [redacted] and was continued on [redacted]. Attorney [redacted] appeared on behalf of Appellant. [redacted], Appellant's mother; [redacted], Appellant's father; [redacted], Psychiatrist, [redacted] ([redacted]); [redacted], Psychiatrist/ Director, [redacted]; [redacted], PhD Psychologist, [redacted]; and [redacted], Administrator; [redacted] for Autism Treatment and Research ([redacted]); appeared as witnesses for Appellant.

Attorney [redacted] appeared on behalf of the [redacted] Community Mental Health Services Program (CMH or Department). [redacted], Director, Children's Services; [redacted], Manager Due Process; [redacted], Compliance Coordinator, [redacted] ([redacted]); [redacted], Psychologist, [redacted]; [redacted], Supports Coordinator Supervisor, [redacted]; appeared as witnesses for the CMH.

Following the completion of the hearing on [redacted], the record was left open until [redacted] so that the parties could submit written closing briefs and so that Appellant's attorney could obtain and submit a Memorandum from the Department of Community Health that was mentioned at the hearing. That Memorandum was received on [redacted] and accepted as Exhibit 23.

## ISSUE

Did the CMH properly deny Appellant's request to receive Community Living Supports (CLS) at the [redacted] for Autism Treatment and Research [redacted]?

## 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 has been diagnosed with Autism Spectrum Disorder, Intermittent Explosive Disorder, and Obsessive Compulsive tendencies. (Exhibit A, p 5; Testimony).

2. The CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area. (Testimony)

3. Appellant last attended school at [redacted] in the special education program through the end of the [redacted] school year. During the summer of [redacted] Appellant attended the [redacted] camp. (Exhibit A, p 5; Testimony).

4. At the time the Request for Hearing was filed in this matter on [redacted], Appellant was receiving services through the Children's Home and Community-Based Services Waiver Program (CWP). (Testimony).

5. As of Appellant's last Person Centered Plan, effective [redacted], Appellant was approved for Community Living Supports (CLS), respite services, and supports coordination. (Exhibit A, pp 5-25; Testimony).

6. At the time of the last Person Centered Planning meeting on [redacted], Appellant's parents were receiving services from CMH through self-determination as the employer or record, although the family did request that CMH assist them with finding CLS workers. The family has had extreme difficulty finding CLS workers because of Appellant's aggression. (Exhibit A, pp 5-6; Testimony)

7. Also, at the time of the Person Centered Planning meeting on [redacted], Appellant's mother requested short-term residential placement for Appellant because of his continued issues with aggression and the inability to find staff that would work with Appellant because of his aggression. (Exhibit A, p 6; Testimony)

8. Appellant's parents had previously requested residential placement for Appellant in [redacted]12. An administrative hearing was held in [redacted] and CMH's decision to deny residential placement was upheld. In upholding the decision, Administrative Law Judge Steven Kibit reasoned:

> Here, Appellant had only been receiving services in his home for a few months before the request for residential placement was made. While there were clearly many difficulties during that time period, it cannot be said at this time that this less restrictive level of treatment has been unsuccessful, especially where Appellant's family cancelled some of the authorized services and has failed to coordinate the services with its private psychologist. Moreover, it is clear that the main problem Appellant's family is having is retaining staff and that the amount, scope and duration of the authorized services is sufficient. While this Administrative Law Judge appreciates the difficulties Appellant's family is having in retaining long-term staff, the MPM still requires that services be provided in the least restrictive, most integrated setting possible and difficulties in staffing alone do not justify a more restrictive level of services. (Decision and Order issued by ALJ Kibit on [redacted])

9. Appellant's family has worked in the past with [redacted] and a Board Certified Behavior Analyst (BCBA) to resolve Appellant's aggression issues without success. A BCBA from [redacted] (TES) worked with Appellant from [redacted] through [redacted], but had to quit because of Appellant's aggression. The BCBA from TES completed a report regarding her work with Appellant, but this report was never provided to the CMH. (Exhibits 1, A, 16; Testimony)

10. On [redacted], an incident occurred with Appellant at [redacted]. Appellant was given permission to leave the classroom to go the bathroom, but instead ran towards another staff member in the hall and pulled the staff member's hair. (Exhibit 6; Testimony)

11. As of [redacted] and [redacted], Appellant's family did not have any CLS staff in the home due to an inability to keep staff due to Appellant's aggressive behaviors. The family asked CMH for assistance or emergency placement for Appellant. CMH made several recommendations to the family including respite at [redacted], having a private BCBA work with Appellant in the home, seeing if the family's insurance would pay for placement at the DART program, and seeking services through the SED Waiver. CMH reminded the family that if they were in danger due to Appellant's behaviors, they should call 911. Appellant's family indicated that they did not want to call 911 because they knew it would lead to Appellant being hospitalized. Ultimately, CMH recommended to Appellant's parents that they have Appellant evaluated for inpatient psychiatric hospitalization if the family was in crisis. (Exhibits 1, 2, 6, 7, 8, 9, 18, Testimony)

12. On [redacted], Appellant's mother was driving Appellant in the family vehicle when Appellant attacked and assaulted her. Appellant's family had previously been instructed by CMH's psychologist not to drive in the car alone with Appellant. Appellant's mother was forced to pull to the side of the road and leave Appellant locked in the vehicle while calling 911 and Appellant's father. The police arrived and ultimately, Appellant was taken by ambulance to [redacted]. By the time the police arrived, Appellant had calmed down to the point where Appellant's father was able to get him out of the van and into the ambulance without incident. (Exhibits A, 4, 5; Testimony)

13. On [redacted], Appellant's mother requested that Appellant be placed in crisis residential care as he was still at [redacted] and was being held in restraints most of the time because of his aggression. (Exhibit 17; Testimony)

14. The Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant on [redacted]. (Exhibit 1)

15. On [redacted], Appellant's mother clarified in an email to CMH that the family was asking the CMH to pay for expenses in a crisis residential placement that were not covered by the family's private insurance. The private insurance would pay for room and board at a residential center. (Exhibit 22; Testimony)

16. On [redacted], Appellant's family filed a Recipients Rights complaint against CMH. On [redacted], the complaint was substantiated on the grounds that requests from Appellant's family did not trigger a mandatory review process of Appellant's services. (Exhibit 20; Testimony)

17. Appellant was transferred from [redacted] to [redacted] on [redacted] 14 and remained at [redacted] through the time of the hearing in this matter. (Exhibits A, 11, 12, 13; Testimony)

18. On [redacted], Appellant's father sent an email to CMH asking how Appellant could become eligible for normal (non-CWP) Medicaid benefits since he had been hospitalized and out of the home for 30 days. Appellant's father sent another message to CMH on [redacted] when he did not receive an answer. On [redacted], CMH responded, indicating that a child would have to be terminated from the CWP before DHS could evaluate him for regular Medicaid. (Exhibits 19, 21; Testimony)

19. While at [redacted], Appellant began taking the medication Clozapine, which, along with the structured support Appellant also received,

decreased his aggressiveness and stabilized his mood. Appellant began taking Clozapine on [redacted]. Appellant was last physically restrained at [redacted] on [redacted]. (Exhibit 11; Testimony)

20. Discharge planning meetings for Appellant began in [redacted]. As of the last date of the hearing in this matter, Appellant was scheduled to be discharged to his home on or about [redacted], provided that appropriate staff and services could be put in place by that time. (Exhibits 11, 12, 13; Testimony)

## 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.]

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. CMHSP contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

The opening section in the Medicaid Provider Manual (MPM), Children's Home and Community Based Waiver Program (CWP) states:

> The Children's Home 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. [MPM, July 1, 2014 version, Mental Health and Substance Abuse Chapter, Section 14 (emphasis added).]

Therefore, as Children's Waiver services are simply an enhancement and addition to regular Medicaid services, which do contemplate residential placements; those services can be provided through the CWP.

To the extent residential placements can be authorized through the CWP, the MPM only allows residential placements in Child Caring Institutions (CCI), in certain circumstances:

> **2.3 LOCATION OF SERVICE**
>
> Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.
>
> * * *
>
> Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCI) unless it is for the purpose of transitioning a child out of an institutional setting (CCI).
>
> * * *
>
> Medicaid does cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint. Medicaid does not cover services provided to persons/children involuntarily residing in non-medical public facilities (such as jails, prisons or juvenile detention facilities). [MPM, July 1, 2014 version, Mental Health and Substance Abuse Chapter, Section 2.3 (emphasis added).]

However, even if the requested residential placement is a covered service under both the CWP and Medicaid in general, Medicaid beneficiaries are only entitled to medically necessary 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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

Here, the applicable July 1, 2014 version of the Michigan Medicaid Provider Manual (MPM), Mental Health and Substance Abuse Chapter, Sections 2.5.C and 2.5.D provides in part:

> **2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**
>
> Supports, services, and treatment authorized by the PIHP must be:
>
> - Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
> - Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
> - Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
> - Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
> - Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies. (Emphasis added)
>
> **2.5.D. PIHP DECISIONS**
>
> Using criteria for medical necessity, a PIHP may:
>
> - Deny services that are:

> deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;

> experimental or investigational in nature; or

> for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or

- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. [emphasis added]

CMH's Director of Children's Services testified that she holds a PhD in Clinical Psychology and is the Director of Children's Services at the CMH. CMH's Director of Children's Services indicated that she supervises Appellant's Supports Coordinators and Psychologists and has been involved with the family directly over the years regarding Appellant's care. CMH's Director of Children's Services described the [redacted] incident where Appellant became aggressive in the car with his mother, which resulted in the police being called and Appellant being taken by ambulance to [redacted]. CMH's Director of Children's Services indicated that Appellant was at [redacted] for three weeks before he was evaluated by [redacted] and transferred to acute care at [redacted].

CMH's Director of Children's Services testified that Appellant has done well at [redacted] and no longer required one-on-one supervision. CMH's Director of Children's Services indicated that Appellant was placed on the medication Clozapine, which reduced his aggressive tendencies and helped him to make progress. CMH's Director of Children's Services testified that CMH was working with [redacted] on a plan to transition Appellant back to the family home. CMH's Director of Children's Services admitted that [redacted] is a CCI under the definition found in the MPM, but opined that the least restrictive environment for Appellant would be the family home.

CMH's Supports Coordinator Supervisor testified that she was Appellant's Supports Coordinator for 1.5 years before becoming a supervisor and was very familiar with Appellant's case. CMH's Supports Coordinator Supervisor testified that Appellant's hospitalization beginning in [redacted] was his first. CMH's Supports Coordinator Supervisor testified that there were staffing issues with Appellant in the summer of [redacted] and that both the family and the agency were looking for staff. CMH's Supports Coordinator Supervisor testified that there was never an issue with the number of hours of CLS authorized for Appellant, rather with maintaining staff because of Appellant's aggressive behaviors.

CMH's Supports Coordinator Supervisor testified that this is the first time Appellant has been on the medication Clozapine. CMH's Supports Coordinator Supervisor indicated that she has met with Appellant since he has been at [redacted], that he is doing much better, and that she believes he should transition home because that would be the least restrictive environment for him. CMH's Supports Coordinator Supervisor testified regarding the efforts being taken to put supports in place for Appellant's transition home. CMH's Supports Coordinator Supervisor also indicated that the staff treating Appellant at [redacted] also agreed that it would be more appropriate to transfer Appellant to his home than to a CCI, provided adequate services were in place before the transition.

CMH's Psychologist testified that he has a Master's Degree in Psychology and is a Limited License Psychologist (LLP). CMH's Psychologist testified that he met Appellant and his family in [redacted] and has seen him since his admission to [redacted]. CMH's Psychologist testified that he agreed with the plan to return Appellant home after [redacted]. CMH's Psychologist pointed out that Appellant is on a different medication regiment now and that this is the first time, to his knowledge, that Appellant has been evaluated and treated by a psychiatrist. CMH's Psychologist testified that based on his face to face interactions with Appellant, he believes Appellant will be successful at home. CMH's Psychologist testified that prior to the incident on [redacted], he had advised the family to always have more than one adult in the car when transferring Appellant.

CMH's Manager of Due Process testified that she worked in this capacity from [redacted] and then again beginning in [redacted]. CMH's Manager of Due Process opined that the least restrictive setting for Appellant is in the family home. CMH's Manager of Due Process indicated that she did not think placement at [redacted] would be right given that it is clear across the state from the family. CMH's Manager of Due Process indicated that the CMH does not generally consider CCI's because the Department's policy is to place persons in the least restrictive environment. CMH's Manager of Due Process testified that she was not aware of any children from Oakland County being placed at [redacted]. CMH's Manager of Due Process reviewed the relevant MPM provisions (outlined above) in support of her position.

Appellant's father testified that he saw Appellant recently at [redacted] with the rest of the family and they had a nice visit. Appellant's father indicated that prior to Appellant's hospitalization, he sometimes had pleasant interactions with Appellant but that there were daily episodes of aggressive behavior where Appellant would attack him and other family members. Appellant's father indicated that he and his wife were often injured by Appellant and that Appellant also hurt himself on occasion by pulling his own hair, scratching himself, biting himself, and slapping himself. Appellant's father testified that CMH offered very few interventions to deal with Appellant's aggressive behavior and the advice basically came down to: stay away or call 911. Appellant's father indicated that Appellant would often have to be kept in the basement away from the family because of his aggressiveness. Appellant's father indicated that Appellant's aggressiveness began around ages 9 to 10 but became more severe recently. Appellant's father testified that they have tried the gentle teaching techniques suggested by CMH but that they do not work with Appellant.

Appellant's father testified that the family did not want to call 911 because they knew Appellant would be hospitalized. Appellant's father indicated that they only called 911 once (following the [redacted] incident) and Appellant has been hospitalized ever since. Appellant's father testified that he started looking into alternatives for Appellant two years ago and discovered [redacted] at that time. Appellant's father indicated that he visited [redacted] and found it to be a very home-like setting, pleasant, with residents walking around and interacting with numerous staff. Appellant's father indicated that he approached CMH in the spring of [redacted] and received an official denial for placement at [redacted] in [redacted]. Appellant's father indicated that the family appealed the decision but CMH's denial was upheld. Appellant's father testified that he felt the decision left the door open for placement in the future if home services did not work out.

Appellant's father testified that services in the home did not work out because they could never keep staff because of Appellant's aggressiveness. Appellant's father indicated that five to seven staff left due to Appellant's aggression and, he believes, also because the pay was inadequate to deal with someone with Appellant's aggressive tendencies. Appellant's father indicated that Appellant has had the same issues at school and eventually went to an extended school year program. Appellant's father testified that the family tried ABA therapy for a short time but the therapist had to quit because she did not feel safe working with Appellant. Appellant's father opined that [redacted] is less restrictive because they follow ABA techniques, which worked with Appellant earlier in his life.

Appellant's father admitted that Appellant is doing better at [redacted] due to a change in his medications, but he also considers this a form of chemical restraint. Appellant's father indicated that the supports the CMH will be offering if Appellant returns home are not as structural as at [redacted]. Appellant's father testified that he asked for CWP services to be terminated because he believed that the CWP funding was preventing CMH from placing Appellant at [redacted]. Appellant's father testified that they are not asking for the CMH to pay for room and board at [redacted], his private insurance will pay

for that. Appellant's father indicated that the family felt like they were on their own when they were on self-determination status. Appellant's father testified that he did not think the family would have to find staff under self-determination; he thought they would only have to interview, hire and pay the staff. Appellant's father opined that home was not the least restrictive environment for Appellant because the family cannot keep staff in the home because of Appellant's behavioral issues. Appellant's father testified that [redacted] has a track record of helping other severely autistic children. Appellant's father testified that his ability to control Appellant has decreased over the years as Appellant has become bigger. Appellant's father indicated that he has had to go to counseling himself because of the stress of dealing with Appellant over the past two years.

Appellant's Psychiatrist at [redacted] testified that she has been on staff at [redacted] for seven years and she performed the initial assessment of Appellant upon his arrival. Appellant's Psychiatrist at [redacted] indicated that Appellant was initially very aggressive towards staff and his peers. Appellant's Psychiatrist at [redacted] testified that she adjusted Appellant's medication and placed him on Clozapine and that he was doing extremely well now. Appellant's Psychiatrist at [redacted] indicated that she has met with Appellant regularly since he arrived at [redacted] and that Appellant was on one to one staffing when he first arrived, but that was discontinued in [redacted]. Appellant's Psychiatrist at [redacted] testified that Appellant did have to be restrained once back in [redacted], but not since that time. Appellant's Psychiatrist at [redacted] indicated that Appellant has not had a stat order for any emergency medications in the past four months because it has not been necessary. Appellant's Psychiatrist at [redacted] opined that Clozapine has played a major role in Appellant's turn around.

Appellant's Psychiatrist at [redacted] testified that for the first six months on Clozapine, Appellant required weekly blood draws, which were all within therapeutic levels. Appellant's Psychiatrist at [redacted] indicated that the frequency of the blood draws would be reduced over time. Appellant's Psychiatrist at [redacted] indicated that Appellant has no problem voluntarily taking his medications and he needs structure with minimal attention and supervision. Appellant's Psychiatrist at [redacted] testified that Appellant regularly attends the cafeteria on his own for meals and works during the day with his iPad and at occupational therapy. Appellant's Psychiatrist at [redacted] testified that with the new medication regiment it is unlikely that Appellant will be a predator or chase people. Appellant's Psychiatrist at [redacted] indicated that she has not seen any acting out behaviors from Appellant in several months. Appellant's Psychiatrist at [redacted] indicated that the medications Appellant was taking when first admitted to [redacted] were not appropriate for him at the levels prescribed. Appellant's Psychiatrist at [redacted] agreed that at the time Appellant was admitted, his condition was such that he needed to be admitted to a psychiatric hospital. Appellant's Psychiatrist at [redacted] also agreed that Appellant should be returned home following his release from [redacted] and that he could be properly managed in the community with adequate services.

The Acting Director at [redacted] testified that he supervises the staff psychiatrist who has been treating Appellant and is familiar with Appellant's case. The Acting Director at [redacted] testified that at [redacted] Appellant is monitored by workers, RN's, a psychologist and psychologist intern, occupational therapists, dietary consultants, a pediatrician, and he receives educational supports and medications managed by a psychiatrist. The Acting Director at [redacted] indicated that Appellant will need the same supports to be successful in the community. The Acting Director at [redacted] testified that he believes Appellant can transition back into an autism centered classroom in the local school district and that he is not seeing aggressiveness from Appellant currently. The Acting Director at [redacted] testified that Appellant has been ready to go home for a couple of months now, but that it takes time to get all of the supports and services in place. The Acting Director at [redacted] opined that Appellant needs a "hospital without walls", meaning that he would receive the same services he is receiving at [redacted], but in the community. The Acting Director at [redacted] indicated that he concurs with Appellant's psychiatrist that Appellant should be transitioned home and he was insistent that 99.9% of all children with Appellant's condition can be treated in the home setting.

The Staff Psychologist at [redacted] testified that she supervises the Psychologist Intern who has been working with Appellant. The Staff Psychologist at [redacted] indicated that the intern works with Appellant at least one-half hour each day and that while the intern is not a certified VCBA, they are using ABA techniques. The Staff Psychologist at [redacted] testified that Appellant has remained free of aggression even during chaotic moments. The Staff Psychologist at [redacted] indicated that moving home will be a big change for Appellant and that it will be agitating to Appellant, but should not make him aggressive. The Staff Psychologist at [redacted] indicated that the last to aggressive moments with Appellant were in late [redacted] and early [redacted], but that Appellant was easily redirected each time. The Staff Psychologist at [redacted] testified that she has observed interactions between Appellant and his family and all are more comfortable now. The Staff Psychologist at [redacted] testified that she thought the plan for Appellant upon his release looked good and included a lot of services. The Staff Psychologist at [redacted] indicated that she has been to [redacted] because she had a patient there, but that it is not a hospital without walls because it is a locked and secure facility and much more sterile than a home environment. The Staff Psychologist at [redacted] indicated that she concurred with the recommendation to return Appellant to his home after his release from [redacted].

The Chief Administrator at [redacted] testified that the facility opened in [redacted] and it is licensed as a CCI with the State of Michigan. The Chief Administrator at [redacted] testified that the facility takes persons age 6-18 with diagnoses of autism or developmental disability for treatment of challenging and dangerous behaviors. The Chief Administrator at [redacted] testified that [redacted] is not a hospital, serves only persons with developmental disabilities, and does not use chemical or physical restraints. The Chief Administrator at [redacted] indicated that patients at the facility do use psychotropic medications and there are patients there taking Clozapine. The Chief Administrator at

[redacted] indicated that the facility does not use stat intravenous medications as restraints. The Chief Administrator at [redacted] indicated that the Department of Community Health has issued a memo indicating that [redacted] is eligible to receive Medicaid dollars as a CCI. The Chief Administrator at [redacted] indicated that the facility is locked because many residents have elopement issues. The Chief Administrator at [redacted] indicated that the capacity of the facility is 12 persons. The Chief Administrator at [redacted] indicated that persons transferring into [redacted] under the CWP are transitioned to income based Medicaid as a family of one. The Chief Administrator at [redacted] indicated that [redacted] bills Medicaid for CLS and that room and board are billed separately.

The Chief Administrator at [redacted] indicated that the facility has state level contracts with the Department of Human Services and contracts with other CMH's in [redacted] and [redacted] County. The Chief Administrator at [redacted] reviewed the treatment residents receive at the facility, including schooling. The Chief Administrator at [redacted] indicated that the facility is not designed to keep residents there forever, but rather to work with them intensely so that their behaviors are modified to the point where they can return to the community. The Chief Administrator at [redacted] indicated that the facility has had success getting patients off medications. The Chief Administrator at [redacted] testified that as a philosophy, [redacted] considers ABA therapy the primary treatment with medications secondary. The Chief Administrator at [redacted] did not offer any opinion as to whether [redacted] was a more appropriate setting for Appellant than his home.

Appellant's mother testified that she discovered [redacted] on-line a couple of years ago when Appellant's aggressiveness escalated. Appellant's mother indicated that Appellant has never received all of the services authorized by CMH because of the lack of staffing and training. Appellant's mother testified that Appellant has come close to hurting his siblings in the past and has hurt both her and her husband. Appellant's mother described in detail the incident that occurred on [redacted]. Appellant's mother did admit that her driving alone in the car with Appellant was contrary to instructions she received from the CMH psychologist.

Appellant's mother testified that she felt abandoned by CMH during the time leading up to the incident and the time Appellant was hospitalized at [redacted]. Appellant's mother indicated that during the summer of [redacted] when they were asking CMH for crisis intervention, they would have taken anything. Appellant's mother testified that she tried not to scare staff away but that it was difficult to keep staff with Appellant's aggressiveness. Appellant's mother testified that the gentle teaching methods employed by CMH staff were not effective. Appellant's mother reiterated that the CMH behavior plan consisted of getting out of Appellant's way or calling 911. Appellant's mother testified that they asked CMH to cancel the CWP because they thought he could then get into [redacted]. Appellant's mother testified that she feels [redacted] is less restrictive and that medications are not an ideal treatment for Appellant because they make him foggy. Appellant's mother indicated that she believes treatment at [redacted] could help Appellant use less medications. Appellant's mother testified that she thinks Appellant could have avoided hospitalization all together if he had been sent to [redacted].

Appellant's mother indicated that she is not willing to bring Appellant home now because she does not believe services are in place. Appellant's mother would like to try ABA at [redacted] first, and then bring Appellant home. Appellant's mother admitted that she did not provide the report conducted by the ABA therapist to CMH. (Exhibit 16).

At the conclusion of Respondent's proofs, Appellant's attorney moved for Summary Disposition. The motion was taken under advisement. Having now heard all of the evidence presented, Appellant's Motion for Summary Disposition is denied. While there are few significant issues of material fact upon which the parties disagree, Appellant is not entitled to judgment as a matter of law. Clearly, the parties have a substantial disagreement over how the facts of the case should be applied to the appropriate law and policy. As such, summary disposition is not appropriate.

In her written closing statement, Appellant's attorney also made a number of constitutional arguments. The undersigned does not have the authority to consider those arguments, but they are preserved in the record should Appellant's attorney wish to raise them in a court that has jurisdiction to consider them. (*See Delegation of Authority, dated February 22, 2013*).

While this case does have a lengthy procedural history, and the parties submitted a great deal of documentary evidence and testimony during the two-day hearing, the ultimate issue to be decided is rather simple under the circumstances that now exist. Appellant has been in a psychiatric hospital for the past seven months. During his psychiatric hospitalization, Appellant's medications were adjusted and he began taking a new medication, Clozapine. Clearly, this medication, coupled with the structured setting at the hospital, has stabilized Appellant to the point where he is no longer aggressive or acting out. As such, given that Appellant is currently not exhibiting the behaviors that led to his hospitalization in the first place, it cannot be said that he cannot be treated in his own home. Successful treatment at home will certainly be contingent on the parties working together to ensure that adequate supports and services are in place, but all of the clinical staff currently involved with Appellant have opined that, if those services are in place, Appellant can be treated safely in his own home. While it is understandable, given Appellant's history, that his parents are weary of this development, it is clear at this time that the least restrictive setting for Appellant is in his own home.

Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant, specifically his own home. Clearly, Appellant's placement in his own home is less restrictive than any residential placement. Furthermore, as noted above, "Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided." Given the strides that Appellant has made during his 7-plus month hospitalization, it cannot be said at this time that treatment at home will be unsuccessful or cannot be safely provided.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's request to use CLS hours at [redacted].

**IT IS THEREFORE ORDERED** that:

The CMH's decision is **AFFIRMED**.

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

cc: [redacted]

RJM[redacted]

Date Signed: [redacted]

Date Mailed: [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.