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. 15-001145 CMH

[redacted] [redacted] [redacted]

Appellant

_____/

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. Appellant is a [redacted] year old minor child. She attended the hearing but did not testify. Appellant's mother and Authorized Hearing Representative, [redacted], appeared and testified on her behalf.

[redacted] Fair Hearing Officer, [redacted], Psychologist; [redacted] Psychologist; and [redacted], Program Director for the Department of Community Mental Health (CMH) appeared and testified as witnesses for the Department of Community Health (DCH).

Appellant's Exhibits 1-3 and Respondent's Exhibits A-O were admitted as evidence.

ISSUE

Did the CMH properly determine that Appellant's request for ADOS-2, MODULE 3, Autism Testing, should be denied?

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 who has been diagnosed with speech and language delay.

2. On [redacted], Community Mental Health of [redacted] Counties performed an assessment on Appellant and determined that Appellant was found to be eligible for Special Education services as a student with [redacted] in [redacted]. An [redacted] report states that Appellant is below average in social-emotional, language, cognitive, literacy and mathematics. (Respondent's Exhibit B, page 2)

3. Appellant was assessed and found to have delays in speech and language. Her adaptive functional age was [redacted] years old. (Respondent's Exhibit B, page 10)

4. On [redacted], Appellant's mother completed a Community Mental Health [redacted] and a Social Communication Questionnaire (CSQ). (Respondent's Exhibits C and D)

5. On [redacted], an Interim Treatment Plan Authorizing an Assessment was issued by CMH. (Respondent's Exhibit F)

6. On [redacted], an Autism Evaluation was conducted and a report issued by CMH which states in part: "Appellant's overall Total Score on Module 1: Pre-Verbal/Single Words was well below the cutoff for Autism Spectrum Disorder. A speech and language delay is present. Appellant uses occasional simple phrases and [redacted] words. She frequently made attempts to engage her mother in activities but less so with the examiner. Facial expressions were directed to others. Appellant displayed appropriate play behaviors with no evidence of restricted or repetitive behaviors. It is recommended that Appellant continues to participate in the PPI program and [redacted] School and a referral for speech services at CMH is made." (Respondent's Exhibit G, page 2)

7. On [redacted], Community Mental Health Sent Appellant an Adequate Notice of Case Action which stated that the request for the applied behavior analysis was denied because the service was not medically necessary and there is an appropriate service that meets Appellant's needs. Appellant does not have Autism Spectrum disorder. She exhibits delays in speech-language. (Respondent's Exhibit I, page 1)

8. On [redacted], [redacted] Health Systems [redacted], Developmental Pediatrician, conducted developmental testing for Appellant and issued findings which state in part: "based on history and examination, diagnoses identified are 1. Autism spectrum disorder; 2. Expressive speech delay; 3. Receptive language delay; 4. Fine motor delay. (Appellant's Exhibit 3 page 3)

9. [redacted] recommended an Autism specific evaluation in the form of ADOS-2, MODULE 3 be conducted and referred Appellant to [redacted] speech and language pathology for speech and language assessment to assess receptive and expressive language functioning, and the pragmatics of social communication. (Appellant's Exhibit 3 page 4)

10. On [redacted] Community Mental Health Psychologist [redacted] conducted a second ADOS-2 Autism Evaluation with Appellant and issued a written report which states in part: "Appellant's

overall score on ADOS-2 fell well below the cut off for the autism spectrum classification. Her ADOS-2 Comparison Score further indicated that, on the ADOS-2, she displayed a minimal to no evidence of autism spectrum-related symptoms as compared with children who have ASD and are of the same chronological age and language level. In determining the appropriate clinical diagnosis for Appellant, the ADOS-2 were considered with all of the information gathered during the assessment, including results from the initial assessment interview, school records, records from the Developmental Behavioral Clinic at the [redacted], CMH Autism Specific questionnaire, and social Communication Questionnaire. On the basis of all this information, the clinical diagnosis of Autism Spectrum Disorder was ruled out. Appellant was diagnosed with speech and language delay." (Respondent's Exhibit J page 3)

11. On [redacted], an Adequate Action Notice was sent to Appellant stating that the department could not provide Appellant with the Autism benefit because the service was not medically necessary. (Respondent's Exhibit L page 1)

12. On [redacted], the department of Community Health received a request for a hearing from Appellant which stated: I am requesting a hearing to dispute the results of Appellant's ADOS-2 testing. The [redacted] County Regional Education Service Agency diagnosed Appellant with ASD. [redacted] Public School diagnosed her with ASD. [redacted] Developmental Pediatrician diagnosed her with ASD, and [redacted] Pediatrician seen signs of ASD also. CMH is saying she shows no signs of ASD." (Respondent's Exhibit A page 2)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

> Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each

> State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.
>
> *42 CFR 430.0*

> The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.
>
> *42 CFR 430.10*

Section 1915(b) of the Social Security Act provides:

> The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection(s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State…

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. BABHA contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.*

The *Medicaid Provider Manual (MPM), Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. The Provider Manual states in pertinent part:

SECTION 18 - APPLIED BEHAVIOR ANALYSIS

The purpose of this policy is to clarify developmental screening policy for children who may be affected by Autism Spectrum Disorder (ASD), and to describe coverage and processes for the treatment of ASD for beneficiaries 18 months through 5 years of age. According to the U.S. Department of Health & Human Services, autism is characterized by impaired social interactions, problems with verbal and nonverbal communication, repetitive behaviors, and/or severely limited activities and interests. Early detection and treatment can have a significant impact on the child's development. Autism can be viewed as a continuum or spectrum, known as Autism Spectrum Disorder (ASD), and includes Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS). The disorders on the spectrum vary in severity and presentation, but have certain common core symptoms. The goals of treatment for ASD focus on improving core deficits in communication, social interactions, and restricted behaviors. Changing these fundamental deficits may benefit children by developing greater functional skills and independence.

18.1 SCREENING

The American Academy of Pediatrics (AAP) endorses early identification of developmental disorders as being essential to the well-being of children and their families. Early identification of developmental disorders through screening by health care professionals should lead to further evaluation, diagnosis, and treatment. Early identification of a developmental disorder and its underlying etiology may affect the medical treatment of the child and family intervention planning for his/her parents. Screening for ASD typically occurs during a well-child visit with the pediatrician or family physician as an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) service.

18.2 REFERRAL

The primary care physician (PCP) who screened the child for ASD and determined a referral for further evaluation was necessary will contact the Pre-paid Inpatient Health Plan (PIHP) directly to arrange for a follow-up evaluation. After a beneficiary is screened and the PCP determines a referral is necessary for a follow-up visit, the PIHP is responsible for the Autism Benefit additional screenings, evaluation, assessment, diagnosis and services for Applied Behavior Analysis (ABA) for eligible Medicaid beneficiaries and for the related medically necessary services under the Mental Health Specialty Services. The PCP must refer the child to the PIHP in the geographic service area for Medicaid beneficiaries. The PIHP will contact the child's parent(s) to arrange a follow-up appointment for a diagnostic evaluation. Each PIHP will identify a specific point of access for children who have been screened and are being referred for a diagnostic evaluation of ASD.

18.3 DIAGNOSIS/DETERMINATION OF ELIGIBILITY FOR TARGET GROUP

Accurate and early diagnosis of ASD is critical in ensuring appropriate intervention and positive outcomes. The following is the process for determining eligibility for ABA for a child referred to the PIHP with a suspected diagnosis of autism or one of the related ASDs, including Autistic Disorder, Asperger's Disorder, and PDD-NOS. The MDCH Behavioral Health and Developmental Disabilities Administration (BHDDA) will make the final eligibility determination for ABA services. Determination of diagnosis of ASD shall be performed by a child mental health professional (CMHP), which includes physicians, fully licensed psychologists, limited licensed psychologists, licensed or limited licensed master's social workers, licensed or limited licensed professional counselors, and registered nurses with a minimum education of a master's degree in a mental health-related field from an accredited school. The CMHP, as defined above, must have at least one year of experience in the examination and treatment of children with ASD, and is able to diagnose within their scope of practice and professional license.

The determination of diagnosis will be performed using the Autism Diagnostic Observation Schedule-Second Edition (ADOS-2). A developmental family history interview, such as the Autism Diagnostic Interview-Revised (ADI-R), shall be administered with validation of diagnosis by a physician (preferably a child psychiatrist) and/or a fully licensed psychologist unless the diagnosis is made by either of those professionals. The CMHP, as defined above, will use the appropriate ADOS-2 module that includes the Toddler Module or Module 1, 2, or 3. The ADOS-2 modules are appropriate to use from 12 months of age through adulthood. The ADOS-2 is to be administered at intake and discharge. An ASD developmental family history interview, such as the ADI-R, shall be administered by the clinicians who are required to obtain advance training in conducting the ADI-R. Interviews should thoroughly address all domains relevant to ASD (social affective/communication skills, restricted repertoire).

The target group for the ABA benefit includes children 18 months through 5 years of age with a diagnosis of ASD based upon a medical diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) of ASD and who have the developmental capacity to clinically participate in the available interventions covered by the benefit. A well-established DSM-IV diagnosis of Autistic Disorder, Asperger's Disorder or PDD-NOS should be given the diagnosis of ASD.

A diagnosis of ASD must not be:

- attributable to a disorder of sensory impairment (e.g., deafness), to a primary language disorder, to schizophrenia, or to social phobia.
- associated with a progressive neurodegenerative condition that would preclude anticipated benefits of treatment, as determined by a physician.
- associated with motor or sensory deficits so severe as to preclude benefit from treatment.

The target group criteria for ASD are operationalized using the criteria below.

18.3.A. CRITERIA FOR AUTISTIC DISORDER

To be diagnosed with AUTISTIC DISORDER, the child must exhibit:

A. A total of six (or more) items from (1.), (2.), and (3.), with at least two from (1.) and one each from (2.) and (3.):

1. Qualitative impairment in social interaction, as manifested by at least two of the following:

   a. marked impairment in the use of multiple nonverbal behaviors (such as eye-to-eye gaze, facial expression, body postures, and gestures) to regulate social interaction.

   b. failure to develop peer relationships appropriate to developmental level.

   c. lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest).

   d. lack of social or emotional reciprocity.

2. Qualitative impairment in communication, as manifested by at least one of the following:

   a. delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime).

   b. in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.

   c. stereotyped and repetitive use of language or idiosyncratic language.

   d. lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

3. Restricted, repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

   a. encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.

   b. apparently inflexible adherence to specific, nonfunctional routines or rituals.

c. stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole body movements).

d. persistent preoccupation with parts of objects.

The MPM states with regard to medical necessity:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;

- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;

- Made within federal and state standards for timeliness;

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and

- Documented in the individual plan of service.

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;

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;

- 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.

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;

- that are 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.

Medicaid Provider Manual,
Mental Health and Substance Abuse Section,
January 1, 2015, pp 140-145.

Appellant's mother testified that Appellant plays next to other children at school but does not play with them. The other children direct Appellant. Appellant does interact with adults. Appellant does not follow verbal commands and often does not understand what she is being told to do. Appellant only says a few words and is mostly non-verbal. Appellant's mother took Appellant to [redacted] where they diagnosed her as having a sensory processing disorder and Attention Deficit Hyperactive Disorder. Appellant does receive speech and occupational therapy at school.

[redacted] testified that a child must have significant deficits in three different areas, (communication, social interaction and restrictive or repetitive actions) in order to qualify for ADOS II MODULE III testing. Appellant did not have significant deficits in any area. The only significant finding was that Appellant was speech delayed. Appellant did not display any unusual sensory-seeking, repetitive or stereotyped behaviors. Appellant engaged in appropriate functional play with several toys. Appellant communicated with words, simple sentences, gestures and eye contact. No echolalia or the use of another's body was observed. She demonstrated good skills in reciprocal social interaction. Her eye contact was clear, flexible and used for a variety of communicative purposes. Appellant does have speech and language delay. The clinical diagnosis of Autism Spectrum Disorder was ruled out. Appellant would benefit from a comprehensive multidisciplinary evaluation to clarify her diagnosis. The assessment should include evaluating Appellant's cognitive skills, adaptive skills and attention.

[redacted]n testified that Appellant was not given ADOS II MODULE III because that test is given to children who speak with at least [redacted] word sentences and can communicate with some fluency. They must be able to tell a story. Appellant spoke a few [redacted]-word sentences but mostly communicated with one or two words or gestures and was unable to communicate in complete sentences. Thus, the ADOS II MODULE III was inappropriate for Appellant. (Respondent's Exhibit J page 3; Testimony)

As indicated above, medically necessary services must be based on information provided by the beneficiary and her family, based on clinical information, made by appropriately trained professionals, and sufficient in amount, scope and duration to reasonably achieve their goals. Here, there is no evidence that Appellant exhibits the type of behavioral issues that would require ADOS II Module III testing or behavioral services. The other services Appellant receives through her school district are sufficient in amount, scope and duration to meet Appellant's needs.

Appellant bears the burden of proving by a preponderance of the evidence that ADOS II MODULE III testing services are medically necessary. CMH provided sufficient evidence that it adhered to federal regulations and state policy when it determined that Appellant had not established the criteria to qualify for ADOS II MODULE III testing. Based on the foregoing analysis, Appellant has failed to meet that burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's decision to deny Appellant's request for ADOS II MODULE III testing was supported by the necessary competent, material and substantial evidence on the record. The Department's action was appropriate under the circumstances.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

[redacted]
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LYL/db

cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.