

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) 334-9505

IN THE MATTER OF

Docket No. 15-003248-TEF

██████████

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 ██████████. ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████, Appellant's Case Manager, appeared as a witness for Appellant.

Attorney ██████████, ██████████, represented the Michigan Department of Community Health (MDCH or Department). ██████████, R.N., CPNA, Nurse Consultant, Children's Special Health Care Services Division, appeared as a witness for the Department.

ISSUE

Did the Department properly determine that Appellant was not eligible for the Home Care Children program?

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 not a Medicaid beneficiary. Appellant is enrolled in his family's Blue Cross Blue Shield (BCBS) insurance program. (Testimony).
2. Appellant is a ██████ year old male, born ██████████, who is diagnosed with autism, expressive language delay, coordination disorder and epilepsy. (Exhibit 5, p 1; Testimony).
3. Appellant is independent in bed mobility, requires supervision for transfers and eating, requires limited assistance with dressing, and requires extensive assistance with toilet use, personal hygiene, bathing, receptive

and expressive language and learning. Appellant is not toilet trained and wears diapers daily. (Exhibit 7, pp 1-2; Testimony)

4. Appellant takes the medication Keppra twice per day, which controls his seizures. Appellant also takes a multivitamin. (Exhibit 5, p 2; Testimony)
5. On ██████████, the Department's Children's Special Health Care Services Division (CSHCS) received a request for consideration of Appellant's eligibility for the Home Care Children program. CSHCS requested additional information, which was received and considered. The additional information consisted of a Medical Report from the ██████████, Appellant's Individualized Education Program Team Report from the local school, and an Individual Plan of Service from the local Community Mental Health agency. (Exhibits 5-10; Testimony).
6. On ██████████, the Department's nurse consultant completed a Level of Care Document Review and Assessment. The Department's nurse consultant determined that Appellant did not require a hospital or skilled nursing facility level of care. The Department's nurse consultant then referred the matter to a specialist within the Department to determine if Appellant required the level of care found in an Intermediate Care Facility (ICF). (Exhibits 4, 11; Testimony)
7. On ██████████, the Department's specialist determined that Appellant did not require the level of care found in an ICF. (Exhibit 12; Testimony)
8. On ██████████, MDCH CSHCS sent Appellant a notice of Home Care Children eligibility denial. The reason stated in the notice was:

Based on the documentation reviewed, the program is denying eligibility for the following reason: your son has been determined to not meet the criteria of: (i) the individual requires a level of care provided in a hospital, skilled nursing facility, or intermediate care facility. (Exhibit 3; Testimony)

9. On ██████████, the Michigan Administrative Hearing System received the Appellant's request for hearing. (Exhibits A, 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 Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) added a provision to Title XIX of the Social Security Act which expanded Medicaid coverage to children with a medical institution level of care need but were otherwise ineligible for Medicaid due to a higher family income. The program is also referred to as the Katie Beckett program. See *P.L. 97-248, Section 134*. In essence, the Katie Beckett provision in TEFRA allowed states to waive the requirement for considering parental income in the process of determining Medicaid eligibility.

The implementing provision of the Code of Federal Regulations, as related to TEFRA individuals under age 19 who would be eligible for Medicaid if they were in a medical institution is, in pertinent part:

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

- (1) The child requires the level of care provided in a hospital, SNF, or ICF.
- (2) It is appropriate to provide that level of care outside such an institution.
- (3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

42 CFR 435.225 (Underline added).

The State of Michigan's policy is consistent with the Social Security Act, Code of Federal Regulations and State Plan. The State of Michigan Bridges Eligibility Manual (BEM) lists the criteria for eligibility and delineates the division of eligibility determination responsibility between the Department of Community Health and the Department of Human Services:

DEPARTMENT POLICY

MA Only

This is an SSI-related Group 1 MA category.

MA is available to a child who requires institutional care but can be cared for at home for less cost.

The child must be under age 18, unmarried and disabled. The income and assets of the child's parents are **not** considered when determining the child's eligibility.

The Department of Community Health (DCH) and DHS share responsibility for determining eligibility for Home Care Children. All eligibility factors must be met in the calendar month being tested.

NONFINANCIAL ELIGIBILITY FACTORS

DCH Responsibilities

DCH determines if medical eligibility exists. That is:

- The child requires a level of care provided in a medical institution (for example the hospital, skilled nursing facility or intermediate care facility); and
- It is appropriate to provide such care for the child at home; and
- The estimated MA cost of caring for the child at home does **not** exceed the estimated MA cost for the child's care in a medical institution. (Underline added.)

DCH also obtains necessary information to determine whether the child is disabled and forwards it to the DHS State Review Team (SRT). If the criterion in BEM 260 is met, disability will be certified on a DHS-49-A, Medical-Social Eligibility Certification, by the SRT.

Communication to the Local Office

If the child is disabled and requirements (a) through (c) above are met, DCH Central Office sends a Policy Decision (MSA-1785) and the medical packet to the appropriate DHS local office. The MSA-1785 certifies that the medical requirements in **DCH Responsibilities** in this item are met.

DCH will also notify the DHS local office when this category can no longer be used for a child. Pursue eligibility for other MA categories when a child is no longer eligible for this category.

Local Office Responsibilities

Do not authorize MA under this category without a MSA-1785 instructing you to do so. Use this category when the child is *not* an SSI or FIP recipient. Use this category before using a Group 2 category.

If a MSA-1785 is received for a child who is **not** an MA applicant or recipient, treat the MSA-1785 as a request for assistance. Contact the child's parents concerning an MA application for the child.

Determine if the child meets the MA eligibility factors in the following items:

- BEM 220, Residence.
- BEM 223, Social Security Numbers.
- BEM 225, Citizenship/Alien Status.
- BEM 257, Third Party Resource Liability.
- BEM 270, Pursuit of Benefits.

Local offices are responsible for disability reviews. See BEM 260.

Note: An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories; see BAM 115 and 220.

INQUIRIES

Inquiries from medical providers or parents concerning medical eligibility (requirements in **DCH Responsibilities** in this item) under this category should be directed to a Nurse Consultant at:

Department of Community Health
Public Health Administration
Bureau of Family, Maternal & Child Health, Children's
Special Health Care Services
Lewis Cass Building, 6th Floor
320 S. Walnut Street
Lansing, MI 48913
Phone: (517) 335-8983

FINANCIAL ELIGIBILITY FACTORS

Financial eligibility is determined by the DHS local office. Only the child's own income and assets are counted. Do **not** deem income and assets from the child's parents to the child.

Groups

The child is a fiscal and asset group of one.

Assets

The child's countable assets cannot exceed the asset limit in BEM 400.

Countable assets are determined based on MA policies in BEM 400 and BEM 401.

Divestment

Do **not** apply policy in BEM 405.

Income Eligibility

Apply the MA policies in BEM 500, 530, and 540 to determine net income. Income eligibility exists when the child's net income is equal to or less than 100% of the SSI federal benefit rate, see RFT 248.

*State of Michigan Department of Human Services,
Home Care Children Bridges Eligibility Manual
(BEM 170) 7-1-2013, pp 1-3.*

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Decision and Order

The State of Michigan operates a medical coverage program for children eligible under the TEFRA provision with approval from the Centers for Medicare and Medicaid Services (CMS). The program is titled Home Care Children and is housed within the Department of Community Health (MDCH) Children's Special Health Care Services Division (CSHCS). Because the State of Michigan opted to operate the Home Care Children program it must offer the program statewide, and must determine for each child requesting eligibility determination, whether he meets the three conditions of 42 CFR 435.225(b). Because the TEFRA provision includes eligibility for Medicaid benefits the Department is required to send a written notice of Home Care Children denial and the Appellant possessed a right to a Medicaid fair hearing. See 42 CFR 431.200, *et seq.*

The Department's witness testified he has a Masters degree in pediatric nursing, is a licensed registered nurse, and has worked as a nurse consultant for the Department of Community Health for approximately █████ years. The Department's witness indicated that as part of his job he makes determinations regarding eligibility for numerous programs for children with disabilities, including the Home Care Children (HCC) program. The Department's witness explained that the HCC program is a special pathway to Medicaid for persons who would not otherwise be eligible for Medicaid. The Department's witness testified that he reviewed the request for consideration for the HCC program from the Appellant in the instant matter, along with supporting medical documentation submitted by Appellant's family, and determined that Appellant was not eligible for the HCC program because he did not require an institutional level of care.

The Department's witness indicated that he determined that Appellant did not require the level of care found in a hospital or skilled nursing facility and that a Department specialist determined that Appellant did not require the level of care found in an ICF. The Department's witness noted that Appellant's seizures were controlled by medication, his parents were able to provide all of his care, Appellant was not frequently hospitalized, and he was receiving Occupational and Speech Therapy through the ██████████ at school, as well as through the local CMH. As such, the Department's witness concluded that Appellant was not eligible for the HCC program because he did not meet the first criteria for admission into the program, namely that "[t]he child requires a level of care provided in a medical institution (i.e., hospital, skilled nursing facility or intermediate care facility)."

Appellant's mother testified that there were a couple of issues with Appellant that were apparently not presented accurately to the Department. First, Appellant's mother indicated that Appellant has serious behavioral issues when it comes to his own safety. Appellant's mother indicated that Appellant has zero awareness of danger from objects or other persons and, if left alone, would run into the street or leave with a stranger. Second, Appellant's mother indicated that Appellant acts out more than was reflected in the medical documentation. Appellant's mother indicated that as Appellant gets older, and bigger, his behaviors are becoming more intense. Appellant's mother testified that sometimes she has to pick Appellant up and remove him from certain situations and, with Appellant now weighing █████ pounds, it is getting more and more difficult to carry him, especially if he is resisting. Appellant's mother also indicated that if Appellant is denied for the HCC program, he will also

lose the services he is receiving at CMH, which happens to be the only local facility that offers the type of sensory therapy Appellant requires.

The preponderance of undisputed evidence in this case demonstrates that the Department properly determined that Appellant is not eligible for the HCC program. The Department's witness testified in a credible manner that in his opinion, based on extensive experience, Appellant was not a child who requires a level of care provided in a medical institution (i.e., hospital, skilled nursing facility or intermediate care facility). Appellant's seizures are controlled by medication, his parents are able to provide all of his daily care needs, Appellant has not been hospitalized on a frequent basis, and he is receiving Occupational and Speech Therapy through the ██████████ at school. While Appellant does have some behavioral issues, those issues do not rise to the level requiring an institutional setting. As such, it appears that Appellant is stable in his current environment and would not require the level of care provided in a medical institution. Therefore, Appellant is not eligible for the HCC program.

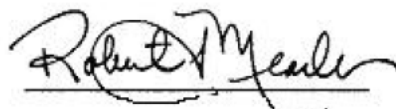
Appellant's family can always reapply for the HCC program if Appellant's condition worsens or the family receives new medical information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Appellant was not eligible for the Home Care Children program.

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 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.