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. 14-017792 MHP
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.,* and upon a request for hearing filed on the minor Appellant's behalf.

After due notice, an in-person hearing was held on [redacted], Appellant's mother, appeared and testified on Appellant's behalf. [redacted]s, Customer Service Supervisor, appeared and testified on behalf of HAP [redacted], the Respondent Medicaid Health Plan (MHP). [redacted], registered nurse, also testified as a witness for the MHP.

ISSUE

Did the MHP properly deny Appellant's prior authorization request for speech therapy (ST) services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On [redacted], the MHP received a prior authorization request submitted on behalf of the minor Appellant and requesting ST services through the MHP. (Exhibit A, pages 10-15).

2. Attached to the request was the report of a Speech-Language Pathology Evaluation conducted on [redacted]. (Exhibit A, pages 12-15).

3. In that evaluation, it was determined that the [redacted] year-old Appellant has moderately to severely impaired receptive language skills; mildly to moderately impaired expressive language skills; and pragmatic language difficulties. (Exhibit A, page 12).

4. The evaluation also noted Appellant's mother as reporting that Appellant's speech issues have been present throughout Appellant's development and had not been exacerbated recently or in the past. (Exhibit A, page 12).

5. The evaluation further recommended that Appellant participate in ST in a medical outpatient setting in order to target her communication difficulties. (Exhibit A, pages 12-15).

6. On [redacted], the MHP sent Appellant's representative written notice that the request for ST services was denied. (Exhibit A, pages 16-18).

7. With respect to the reason for the denial, the notice stated:

> The reasons for the denial are as follows:
>
> - This ST is habilitative, and a short-term treatment would not be expected to result in major progress in functional level.
>
> - Please consult with the intermediate school district in your area
>
> The decision is based on benefit coverage, evidence-based medical guidelines, scientific facts, FDA regulations, medical necessity, and/or other criterion, as supported below:
>
> The Medicaid Provider Manual, Section 5.3 Speech Therapy, states the Michigan Department of Community Health (MDCH) covers speech-language therapy provided in an outpatient setting. Therapy must be reasonable, medically necessary, and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. Speech therapy is not covered:
>
> - If the therapy is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax

> or semantics (which are developmental) or articulation errors that are within the normal developmental process.
>
> • If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
>
> *Exhibit A, page 16*

8. On [redacted], Appellant's representative filed a local appeal with the MHP. (Exhibit A, pages 39-56).

9. Appellant's representative attached documentation to that appeal, including a letter from her stating that she has tried everything recommended to assist Appellant inside the home, including the use of educational tools, library activities and playgroups, and that Appellant is still behind. (Exhibit A, page 40).

10. Appellant's representative also attached a letter from the [redacted] School District TOTE Early Intervention Program in which the speech pathologist and the supervisor for that program indicated that the role of its staff is to assist with the integration of learning activities into family routines and that, while speech therapy is available on a consultative basis, it is not a direct service model and is different from a medical speech and language therapy model. (Exhibit A, page 43).

11. On [redacted] the MHP sent Appellant's representative written notice that the local appeal within the MHP was denied because the ST would be habilitative and ST services are available through the Early On program. (Exhibit A, pages 57-59).

12. The denial also advised Appellant to consult with her local Intermediate School District after Appellant turned [redacted] years-old. (Exhibit A, page 57).

13. On [redacted], Appellant's representative filed a Level II appeal with the MHP. (Exhibit A, pages 60-80).

14. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1, page 1).

15. On [redacted] the MHP sent Appellant's representative written notice that her Level II appeal was also denied on the basis that the ST would be habilitative and ST services are available through the Early On program. (Exhibit A, pages 81-83).

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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those MHPs and, as provided in the applicable version of the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

> The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.)
>
> MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization

management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHPS)

The following services must be covered by MHPs:

- Ambulance and other emergency medical transportation
- Blood lead services for individuals under age 21
- Certified nurse-midwife services
- Certified pediatric and family nurse practitioner services
- Childbirth and parenting classes
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment and medical supplies
- Emergency services
- End Stage Renal Disease (ESRD) services
- Family planning services
- Health education
- Hearing and speech services
- Hearing aids
- Home health services

- Hospice services (if requested by enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative nursing care (in or out of a facility) for up to 45 days
- Medically necessary transportation for enrollees without other transportation options
- Medically necessary weight reduction services
- Mental health care (up to 20 outpatient visits per calendar year)
- Out-of-state services authorized by the MHP
- Outreach for included services, especially pregnancy-related and well-child care
- Pharmacy services
- Podiatry services
- Practitioner services (such as those provided by physicians, optometrists, or oral maxillofacial surgeons)
- Prosthetics and orthotics
- Therapies (speech, language, physical, occupational)
- Tobacco cessation treatments, including pharmaceutical and behavior support
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)

- Vision services
- Well child/EPSDT for individuals under age 21

1.2 SERVICES EXCLUDED FROM MHP COVERAGE BUT COVERED BY MEDICAID

The following Medicaid services are not covered by MHPs:

- Custodial care in a licensed nursing facility; restorative or rehabilitative nursing care in a licensed nursing care facility beyond 45 days
- Certain dental services (Refer to the Dental chapter of this manual for additional information.)
- Specific injectable drugs administered through a PIHP/CMHSP clinic to MHP enrollees are reimbursable by MDCH on a fee-for-service basis. (Refer to the Injectable Drugs and Biologicals subsection of the Practitioner Chapter of this manual for additional information.)
- Home and Community Based Waiver program services
- Inpatient hospital psychiatric services (MHPs are not responsible for the physician cost related to providing a psychiatric admission physical and histories. However, if physician services are required for other than psychiatric care during a psychiatric inpatient admission, the MHP would be responsible for covering the cost, provided the service has been prior authorized and is a covered benefit.)
- Maternal Infant Health Program (MIHP)
- Mental health services outside the MHP's contractual responsibility
- Outpatient partial hospitalization psychiatric care

- Personal care or home help services
- Private Duty Nursing services
- Services provided to persons with developmental disabilities and billed through the Community Mental Health Services Program (CMHSP)
- Services provided by a school district and billed through the Intermediate School District
- Substance abuse services through accredited providers, including:
- Screening and assessment;
- Detoxification;
- Intensive outpatient counseling and other outpatient services; and
- Methadone treatment
- Transportation for services not covered by the MHP.

1.3 SERVICES THAT MHPS ARE PROHIBITED FROM COVERING

- Elective therapeutic abortions and related services. Abortions and related services are covered when medically necessary to save the life of the mother or if the pregnancy is a result of rape or incest;
- Experimental/Investigational drugs, procedures or equipment;
- Elective cosmetic surgery; and
- Services for treatment of infertility.

MPM, October 1, 2014 version
Medicaid Health Plan Chapter, pages 1-3
(Emphasis added by ALJ)

This case involves a request for ST and, with respect to such services, the applicable version of the MPM states in the pertinent part:

> **5.3 SPEECH THERAPY**
>
> The terms speech therapy, speech-language pathology, speech-language therapy, and therapy are used to mean speech and language rehabilitation services and speech-language therapy.
>
> MDCH covers speech-language therapy provided in the outpatient setting. MDCH only reimburses services for speech-language therapy when provided by:
>
> - A speech-language pathologist (SLP) with a current Certificate of Clinical Competence (CCC).
> - An appropriately supervised SLP candidate (i.e., in their clinical fellowship year [CFY]) or having completed all requirements but has not obtained a CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.
> - A student completing his clinical affiliation under direct supervision of (i.e., in the presence of) an SLP having a current CCC. All documentation must be reviewed and signed by the appropriately credentialed supervising SLP.
>
> MDCH expects that all SLPs will utilize the most ethically appropriate therapy within their scope of practice as defined by Michigan law and/or the appropriate national professional association.
>
> **For all beneficiaries of all ages**, speech therapy must relate to a medical diagnosis, and is limited to services for:
>
> - Articulation
> - Language
> - Rhythm
> - Swallowing

- Training in the use of an speech-generating device
- Training in the use of an oral-pharyngeal prosthesis
- Voice

For CSHCS beneficiaries (i.e., those not enrolled in Medicaid; only enrolled with CSHCS), therapy must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing the care of the beneficiary.

Therapy must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess the beneficiary for deficits, develop a treatment program and provide therapy). Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family member, or caregiver) would not be reimbursed as speech therapy by MDCH.

*For beneficiaries of all ages, therapy is **not** covered:*

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.

- *If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.*

- *If it is designed to facilitate the normal progression of development without compensatory techniques or processes.*

- If continuation is maintenance in nature.

- *If provided to meet developmental milestones.*

- If Medicare does not consider the service medically necessary.

5.3.A. DUPLICATION OF SERVICES

Some areas (e.g., dysphagia, assistive technology) may appropriately be addressed by more than one discipline (e.g., OT, PT, speech therapy) in more than one setting. MDCH does not cover duplication of services, i.e., where two disciplines are working on similar areas/goals. It is the treating therapist's responsibility to communicate with other practitioners, coordinate services, and document this in his reports.

5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES

School-aged beneficiaries may be eligible to receive speech-language therapy through multiple sources. Educational speech is expected to be provided by the school system and is not covered by MDCH or CSHCS. Examples of educational speech include enhancing vocabulary, improving sentence structure, improving reading, increasing attention span, and identifying colors and numbers. Only medically necessary therapy may be provided in the outpatient setting. Coordination between all speech therapy providers should be continuous to ensure a smooth transition between sources.

Outpatient therapy provided to school-aged children during the summer months in order to maintain the therapy services provided in the school are considered a continuation of therapy services when there is no change in beneficiary

> diagnosis or function. Prior authorization is required before initiating a continuation of therapy.
>
> If a school-aged beneficiary receives medically necessary therapy services in both a school setting (as part of an Individualized Education Plan [IEP]) and in an outpatient setting, coordination of therapy between the providers is required. Providers are to maintain documentation of coordination in the beneficiary's file.
>
> *MPM, October 1, 2014 version*
> *Outpatient Therapy Chapter, pages 18-20*
> *(Emphasis added)*

Here, as provided in the written notices of denial, the MHP denied the request for ST because the therapy would be habilitative in nature, *i.e*. treatment that would teach Appellant communication skills for the first time without compensatory techniques or processes, and the MPM expressly excludes such habilitative therapy from coverage.

Appellant's representative bears the burden of proving by a preponderance of the evidence that the MHP erred in deciding to deny the prior authorization request for ST services.

Given the record in this case, Appellant's representative has failed to meet her burden of proof and the MHP's decision must be affirmed.

Appellant's representative testified that she has tried everything recommended by the MHP and others to assist Appellant inside the home, including the use of educational tools, library activities and playgroups, but that Appellant continues to have difficulties with speech. She also testified that, as acknowledged by the program's own staff, the ST services through the Early On program are inadequate and that Appellant needs additional services. Appellant's representative further testified that, as advised by the MHP, she pursued additional services through the local school district and, after there were indications that Appellant may be autistic, the local Prepaid Inpatient Health Plan (PIHP)/Community Mental Health Service Provider (CMHSP), but that Appellant did not meet the criteria for services through those entities.

However, while this ALJ sympathizes with the Appellant's circumstances, the above cited policy of the MPM clearly states that ST is not covered through the MHP in several circumstances and, in this case, the requested therapy services are clearly for non-covered habilitative or developmental purposes. It is undisputed that Appellant has long-term issues and that the requested therapy would be helping her develop and teaching her communication skills for the first time. Therefore, per the above policy, ST through the MHP is not covered for the needs and goals identified in this case. The MHP's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's prior authorization request for speech therapy services.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [redacted]

Date Mailed: [redacted]

SK/db

cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System 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.