

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:

██████████,

Docket No. 14-017862 CMH

██████████

██████████

Appellant

_____ /

DECISION and ORDER OF DISMISSAL

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

After due notice, an in-person hearing was held on ██████████, Appellant's father, appeared and testified on Appellant's behalf. ██████████, Appellant's mother, also testified as a witness for Appellant. ██████████, Medicaid Fair Hearings Officer, represented the Respondent ██████████ County Community Mental Health Authority (CMH). ██████████, attorney, appeared on behalf of ██████████, Budget Specialist; ██████████, Supports Coordinator Manager; and ██████████, Supports Coordinator; from ██████████ testified as witnesses for Respondent.

During the hearing, Respondent moved for dismissal on the basis that no negative action has been taken with respect to any Medicaid-covered services and that, consequently, the undersigned Administrative Law Judge lacked jurisdiction in this case. The undersigned Administrative Law Judge then indicated that he would take the motion under advisement and that the hearing would continue as scheduled.

Following the completion of the hearing, the undersigned Administrative Law Judge also left the record open for ██████████ week, until ██████████, so that Respondent could submit as evidence some Employment Agreements it had referenced during the hearing. Appellant's representative indicated that they already had copies of the additional evidence, so no time was given for a response and the documents were admitted as Exhibit B.

ISSUE

Did Respondent properly deny requests for reimbursement?

FINDINGS OF FACT

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

1. The CMH is under contract with the Michigan Department of Health and Human Services to provide Medicaid covered services to beneficiaries who reside in its service area.
2. In turn, the CMH contracts with ██████████ to provide and oversee services.
3. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with, among other conditions, a mild intellectual disability, a respiratory abnormality, and primary pulmonary hypertension. (Exhibit A, pages 12, 33)
4. Appellant has been receiving services through the CMH and ██████████, including ██████ hours of Community Living Supports (CLS) per week; ██████ miles of transportation reimbursement per week; ██████ per month of discretionary funds for staff activities; and fiscal intermediary services. (Exhibit A, pages 21, 29; Testimony of ██████████; Testimony of ██████████).
5. In utilizing her services, Appellant has chosen the self-determination option offered by ██████████, in which she employs workers directly and arranges services. (Exhibit A, page 25; Testimony of ██████████; Testimony of ██████████s).
6. As part of the self-determination arrangements, Appellant's direct hire workers submit time sheets and receipts to the fiscal intermediary. (Exhibit A, pages 40-41, 47; Exhibit B).
7. For the time period of ██████████ to ██████████, ██████ of those workers, ██████████ and ██████████, submitted time sheets and receipts for ██████ of funds. (Exhibit A, pages 41-44, 46-60, 62-65, 67, 71, 74-76; Testimony of ██████████).
8. However, only ██████ of the requested ██████ was subsequently reimbursed because the CLS staff could only be reimbursed for funds spent as part of their staffing hours and a review of the documentation revealed that some of the submitted receipts provided insufficient information while others were from times when no CLS worker was working or a different CLS than the one who submitted the receipt was working. (Testimony of ██████████).

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9. [REDACTED] also submitted receipts related to costs for a trip in [REDACTED] for an annual puppeteering convention that Appellant attends in [REDACTED]. (Exhibit A, pages 16, 68-70, 73).
10. However, none of the costs related to the trip to the convention were reimbursed because they were determined to be travel monies related to a vacation. (Testimony of [REDACTED]; Testimony of [REDACTED]).
11. A [REDACTED] direct hire worker, [REDACTED] was also denied approximately [REDACTED] in payments because the services were provided prior to [REDACTED] being trained and approved as a worker. (Testimony of [REDACTED]; Testimony of [REDACTED]).
12. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit 1, pages 1-2; Exhibit A, pages 8-9).
13. In that request, Appellant and her representative first requested that Appellant and the direct hire workers be reimbursed for all the money they spent between [REDACTED] and [REDACTED] (Exhibit 1, pages 1-2; Exhibit A, pages 8-9).
14. Appellant also requested reimbursement for the costs related to the trip to the puppeteering convention. (Exhibit 1, pages 1-2; Exhibit A, pages 8-9).
15. Appellant and her representative further requested reimbursement for services provided by [REDACTED]. (Exhibit 1, pages 1-2; Exhibit A, pages 8-9).
16. Overall, Appellant and her representative generally alleged that [REDACTED] has repeatedly failed to update them on any changes in the rules or in what they had to do, as well as continually delaying in making payments. (Exhibit 1, pages 1-2; Exhibit A, pages 8-9; Testimony of Appellant's representative; Testimony of [REDACTED]).

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

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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

Additionally, 42 CFR 430.10 states:

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 also 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...

42 USC 1396n(b)

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 Health and Human Services (DHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

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Appellant is a Medicaid beneficiary and has been receiving services through the program. However, as discussed above, Respondent has moved for dismissal in this case on the basis that no negative action has been taken with respect to any of Appellant's Medicaid-covered services and, consequently, the undersigned Administrative Law Judge lacks jurisdiction.

As noted by Respondent, the Code of Federal Regulations only affords a Medicaid beneficiary a right to a fair hearing when the CMH takes a negative action, such as the denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. See 42 CFR 438.400 *et seq.*

Here, the CMH has taken no action that is a denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. While Appellant has been approved for Medicaid covered services, such as CLS and fiscal intermediary services, those services have not been denied, reduced, suspended or terminated. Instead, Appellant's issues are with how those services are being provided through the self-determination program and the denial of reimbursements for direct care workers. However, that type of staff reimbursement is not a specific Medicaid covered service and the complaints regarding the use of the arrangements that support self-determination to obtain services do not give rise to a right to a Medicaid Fair Hearing.

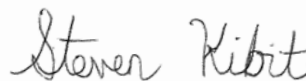
To the extent Appellant is dissatisfied with the how her services are being provided through the self-determination option, she may consider filing a complaint with the appropriate Recipient Rights office. However, regardless of any other options she may have, the undersigned Administrative Law Judge lacks jurisdiction in this matter and it must be dismissed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that he lacks jurisdiction in this matter.

IT IS THEREFORE ORDERED that:

This matter is **DISMISSED**.



Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed: _____

Date Mailed: _____

[REDACTED]

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SK/db

cc:

[REDACTED]

**** NOTICE ****

The Appellant may request a rehearing or reconsideration, or appeal the Dismissal Order to Circuit Court within 30 days of the receipt of the Order