

**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. 15-002510 CMH

████████████████████

██████████

██████████

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 a hearing filed on the minor Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ Appellant's co-legal guardian, appeared and testified on Appellant's behalf. Appellant was also present, but did not participate. ██████████ Fair Hearing Officer, represented Respondent ██████████ County Community Mental Health (CMH). ██████████, Case Manager at the CMH; ██████████, Program Manager at the CMH; and ██████████, Specialist with the Federal Compliance Section for the Department of Health and Human Services (DHHS or Department); also testified as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's application for the Children's Home and Community Based Services Waiver Program (CWP)?

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 DHHS to provide Medicaid covered services to beneficiaries who reside in its service area.
2. Appellant is a ██████ year-old male who was brought to the ██████████ of ██████████ when he was ██████ years-old and is in the care of his ██████ legal guardians. (Exhibit 1, pages 1-2; Exhibit A, pages 1-2; Testimony of Appellant's representative).
3. Neither of Appellant's legal guardians is related to him. (Testimony of Appellant's representative).

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4. Moreover, Appellant's birth mother is dead, his father is unknown, and he has no other living relatives. (Testimony of Appellant's representative).
5. Appellant has been diagnosed with Congenital Quadriplegia and Profound Intellectual Disabilities. (Exhibit A, page 5).
6. Appellant is also totally dependent on his caregivers and he requires around-the-clock care and supervision. (Exhibit A, pages 2, 5).
7. The CMH has been providing services to Appellant out of its General Fund and, due to his high needs, also assisted Appellant's guardians in applying for the CWP on Appellant's behalf. (Testimony of [REDACTED]; Testimony of [REDACTED]).
8. Representatives from the Department then advised the CMH to deny the application for the CWP pursuant to the policy that, to be eligible for the CWP, a child must reside with his birth parent(s), his legally adoptive parent(s), or a relative who has been named his legal guardian under the laws of the [REDACTED]. (Testimony of [REDACTED]; Testimony of [REDACTED]).
9. On [REDACTED] and [REDACTED] the CMH sent Appellant's guardians written notices that the application for the CWP was denied due to the fact that Appellant did not reside with his birth parent(s), his legally adoptive parent(s), or a relative who has been named his legal guardian under the laws of the State of Michigan. (Exhibit A, pages 35-38).
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Exhibit 1, pages 1-2).

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

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)

Among the services that can be provided by the Department and the CMH is the Children's Home and Community Based Services Waiver Program (CWP). The Department's Medicaid Provider Manual (MPM) governs the specific provision of services through the CWP and, with respect to that program, the applicable version of the MPM states in part:

SECTION 14 – CHILDREN'S HOME AND COMMUNITY-BASED SERVICES WAIVER (CWP)

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.

14.1 KEY PROVISIONS

The CWP enables Medicaid to fund necessary home- and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

The CMHSP is responsible for assessment of potential waiver candidates. The CMHSP is also responsible for referring potential waiver candidates by completing the CWP "pre-screen" form and sending it to the MDCH to determine priority rating.

Application for the CWP is made through the CMHSP. The CMHSP is responsible for the coordination of the child's waiver services. The case manager, the child and his family, friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in the Individual Plan of Services (IPOS). The IPOS must be reviewed, approved and signed by the physician.

A CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

14.2 ELIGIBILITY

The following eligibility requirements must be met:

- The child must have a developmental disability (as defined in Michigan state law), be less than 18 years of age and in need of habilitation services.
- The child must have a score on the Global Assessment of Functioning (GAF) Scale of 50 or below.
- *The child must reside with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian for that child under the laws of the State of Michigan, provided that the relative is not paid to provide foster care for that child.*
- The child is at risk of being placed into an ICF/IID facility because of the intensity of the child's care and the lack of needed support, or the child currently resides in an ICF/IID facility but, with appropriate community support, could return home.
- The child must meet, or be below, Medicaid income and asset limits when viewed as a family of one (the parent's income is waived).
- The child's intellectual or functional limitations indicate that he would be eligible for health, habilitative and active treatment services provided at the ICF/IID level of care. Habilitative services are designed to assist individuals in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings. Active treatment includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment is directed toward the acquisition of the behaviors necessary for the beneficiary to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status.

*Mental Health/Substance Abuse Chapter, pages 85-86
(Italics added for emphasis by ALJ)*

Here, the CMH, at the direction of DHHS, denied Appellant's application for the CWP on the basis that Appellant did not, as required by the policy highlighted above, reside with his birth parent(s), his legally adoptive parent(s), or a relative who has been named his legal guardian under the laws of the [REDACTED]

It is undisputed that Appellant does not meet that eligibility requirement in this case, and, instead, his representative argues that an exception should be made because of Appellant's unusual circumstances.

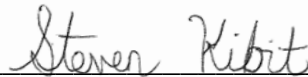
However, while the undersigned Administrative Law Judge sympathizes with the Appellant, he is bound by the applicable policy. That policy is clear in this case and, given its plain language, Appellant does not meet the eligibility requirements for the CWP. Accordingly, the CMH's decision must be affirmed.

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 application for the CWP.

IT IS THEREFORE ORDERED that:

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



Steven J. 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]

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***** 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.