

**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. 15-004332 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 mother, appeared and testified on Appellant's behalf. ██████████, Director of Quality and Managed Care Services, appeared and testified on behalf of the Respondent ██████████ ██████████ Community Mental Health Authority (the "CMH"). ██████████, Associate Executive Director of Consumer Services, and ██████████, Family Program Director, also testified as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for 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. Appellant is an ██████████ year-old who suffered a bicycle accident on ██████████
2. Subsequently, he underwent oral and facial surgeries, and was on significant pain medications for approximately ██████████ weeks.
3. Once Appellant was taken off pain medications, he began to exhibit significant psychological and cognitive changes.

Docket No. 15-004332 CMH
Decision and Order

4. For example, Appellant initially suffered from amnesia of everything prior to the accident and, while some of his memory later returned, he still exhibits deficits in memory.
5. He further displayed an inability to concentrate, was easily confused, and lacked imagination.
6. Appellant was also anxious and afraid of anything that has motion, such as riding in a car, and he would therefore avoid activities he previously enjoyed.
7. On [REDACTED], Appellant underwent a neuropsychological evaluation at the [REDACTED] Health Systems.
8. During that evaluation, Appellant's cognitive functioning performance was within normal limits, but he showed a poor strategy for encoding and his recall of information was significantly impaired.
9. He also demonstrated mild-to-moderate impairments in mental flexibility and impaired working memory.
10. The pediatric neuropsychologist did note that it was unclear how much of Appellant's symptoms were caused by underlying emotional and motivational factors, and that he recommended that Appellant begin counseling through the CMH.
11. Appellant was held out of school for months and, when he did return, his accommodations included no testing or examinations, additional assistance, and breaks as needed.
12. However, even with those accommodations, it was noted that Appellant had a significant decline in his math skills.
13. On J [REDACTED] from [REDACTED] [REDACTED], examined Appellant and diagnosed him with a concussion, a cognitive impairment, and anxiety.
14. That same day, [REDACTED] also wrote a letter in which she recommended that Appellant see a school counselor in order to address his anxiety, his coping with anxiety and continued cognitive difficulties, and possible post-traumatic stress disorder (PTSD).
15. On [REDACTED], Appellant's representative applied for services for Appellant through the CMH and an Initial Intake was performed.

██████████
Docket No. 15-004332 CMH
Decision and Order

16. During that intake, Appellant's representative described Appellant's ongoing anxiety and cognitive impairments.
17. ██████████ then diagnosed Appellant with an adjustment disorder, unspecified; PTSD; and an unspecified concussion
18. She also evaluated Appellant under the Child and Adolescent Functional Assessment Scale ("CAFAS") and determined that he scored a ██████ on that scale due to mild impairment in his role performance at home, but was not impaired in the other areas of the scale (school/work, community, behavior towards others, moods/emotions, self-harmful behavior, substance use, and thinking).
19. Appellant was not evaluated for a development disability at that time.
20. On ██████████ the CMH sent Appellant and his representative written notice that the request for services was denied on the basis that Appellant did not meet the minimum criteria as a SED child based on the combination of his CAFAS score and his Global Assessment of Functioning score.
21. On ██████████, the CMH received Appellant's representative's request for a second opinion and, on ██████████ another assessment was performed.
22. During that assessment, Appellant's representative reported that Appellant was more emotionally regulated and social, but his anxiety and memory impairment continued and it was affecting his math skills at school and his ability to follow directions at home,
23. Another CAFAS assessment was also performed and Appellant scored the same as during the first assessment.
24. On ██████████, the CMH gave Appellant and his representative written notice that the request for services was again denied because he did not meet the criteria for SED services.
25. That same day, Appellant's representative requested a local appeal through the CMH.
26. The hearing on the local appeal was held on ██████████.
27. On ██████████, the CMH sent Appellant's representative written notice that it would like to discuss the matter further with her and to perform another functional assessment.

██████████
Docket No. 15-004332 CMH
Decision and Order

28. On ██████████ another functional assessment was performed.
29. During that assessment, it was noted that Appellant was in school, but with accommodations and no testing or recess, but that he continued to have impairments in math and issues with both his short-term and long-term memory.
30. It was also reported that Appellant continued to be scared and anxious around anything involving motion and that he had sleep disturbances ██████████ to ██████████ times a week.
31. Appellant also recently refused to go sledding and witnessed the family's cat getting hit by a car.
32. Appellant had mild difficulty concentrating during the assessment, but he did express sadness about his anxiety and bad things that had happened in past.
33. The CMH also performed another CAFAS assessment and revised Appellant's score.
34. Specifically, it determined that Appellant scored a ██████████ due to his symptoms of depression, anxiety and sleep disturbances, and that he was moderately impaired in his mood/emotions while also being mildly impaired in his school/work and at home.
35. Overall, the CMH determined that, even with that revised CAFAS score and the updated information provided during the assessment, Appellant did not meet the criteria for a SED.
36. Appellant was also assessed for a developmental disability at that time, though it was noted that it was difficult to determine Appellant's functioning due to Appellant's doctor's prohibition on further testing.
37. The CMH did review the most recent testing, the ██████████ neuropsychological evaluation, and speak with Appellant's representative.
38. Appellant's representative reported that Appellant's math skills had definitely declined and that he was probably worse in other areas as well.
39. She also reported that reported that Appellant is expected to regain cognitive skills through healing process.
40. The CMH then determined that Appellant did not meet the definition of a developmental disability.

41. On ██████████ the CMH sent Appellant and his representative written notice that the request for services was denied on the basis that Appellant did not have a SED or a DD as required by policy in order to receive services.
42. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on the minor Appellant's behalf in this matter. (Exhibit 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

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.

Here, the CMH contracts with the DHHS to provide services pursuant to its contract with the Department and eligibility for services through it is set by Department policy, as outlined in the Medicaid Provider Manual ("MPM"). Specifically, the MPM states that:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record.

The following table has been developed to assist health plans and PIHPs in making coverage determination decisions related to outpatient care for MHP beneficiaries. Generally, as the beneficiary's psychiatric signs, symptoms and degree/extent of functional impairment increase in severity, complexity and/or duration, the more likely it becomes that the beneficiary will require specialized services and supports available through the PIHP/CMHSP. For all coverage determination decisions, it is presumed that

the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders published by the American Psychiatric Association.

MPM, April 1, 2015 version
Mental Health/Substance Abuse Chapter, page 3
(Emphasis added by ALJ)

The State of Michigan's Mental Health Code defines mental illness and serious emotional disturbance as follows:

2. "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. "V" codes in the diagnostic and statistical manual of mental disorders.

3. "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental

illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- a. A substance abuse disorder.
- b. A developmental disorder.
- c. A "V" code in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d

Additionally, with respect to developmental disabilities, the Mental Health Code also provides:

(21) "Developmental disability" means either of the following:

- a. If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
 - i. Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - ii. Is manifested before the individual is 22 years old.
 - iii. Is likely to continue indefinitely.
 - iv. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - A. Self-care.
 - B. Receptive and expressive language.
 - C. Learning.
 - D. Mobility.
 - E. Self-direction.
 - F. Capacity for independent living.
 - G. Economic self-sufficiency.
 - v. Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

- b. If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

MCL 330.1100a(25)

Here, the minor Appellant's application for services was reviewed multiple times and by different CMH staff under the standards for a Serious Emotional Disturbance ("SED"), a developmental disability, or both. Each time, it was determined that Appellant did not meet the criteria for services.

Appellant's representative bears the burden of proving by a preponderance of the evidence that the CMH erred. For the reasons discussed below, the undersigned Administrative Law Judge finds that she has failed to meet that burden of proof and that the CMH's decision must therefore be affirmed.

With respect to the SED determination, it is undisputed that Appellant has had a diagnosable mental, behavioral, or emotional disorder affecting him for a sufficient period of time to meet the criteria for a SED, *i.e.* his PTSD. However, while Appellant has PTSD, it does not appear that his PTSD has resulted in substantial functional limitations in three or more of the major life activities listed in the code: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency. Appellant's PTSD has caused anxiety, especially around anything in motion; disturbances in sleep, some depression; and avoidance of activities he previously enjoyed; but those impairments are not substantial and do not affect a sufficient number of major life activities. Even Appellant's representative acknowledged that, overall, Appellant is well-rounded and that the therapy was requested, in part, to prevent more serious problems in the future. Accordingly, while Appellant would benefit from treatment of his PTSD and the CMH has referred him to other providers, he does not meet the criteria for having a SED and the CMH therefore properly denied his request for services on that basis.

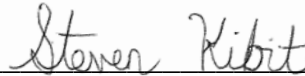
Additionally, with respect to the developmental disability determination, while Appellant has a mental impairment that has manifested before he is █████ years-old, that impairment is not likely to continue indefinitely. Appellant has already shown improvement, and he is expected to keep improving and fully recover in time. As acknowledged by the CMH's witnesses, any development disability determination is hindered by the lack of any current testing due to Appellant's doctor's prohibition on testing at this time and, to the extent Appellant is assessed or tested again in the future, he can always reapply for services with new or updated information. However, with respect to the determination at issue in this case, the CMH's determination was proper given the information that is available.

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 request for services.

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]

***** 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.