

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 15-004875 CMH

██████████

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held ██████████
██████████ the Appellant's mother appeared and testified on the Appellant's behalf.

██████████, Fair Hearings Officer appeared on behalf of Community Mental Health Authority ██████████ (CMH), representing the Department. ██████████ MSW, LLMSW, Case Manager, ██████████ LMSW, Case Manager, ██████████ LMSW, Family Support Coordinator/Intake Team Supervisor and ██████████, LMSW, Life Consultation Supervisor, with CMH's Community Services for the Developmentally Disabled appeared as witnesses for the Department.

ISSUE

Does the Appellant meet the eligibility requirements for Medicaid Specialty Supports and Services through CMH?

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 Appellant is a ██████ year-old female (DOB: ██████████) Medicaid beneficiary. (Exhibit A, p. 5; Exhibit B, pp. 2, 11 and testimony).
2. CMH is a contractor of the Michigan Department of Health and Human Services (MDHHS) pursuant to a contract between these entities.

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3. CMH is required to provide Medicaid covered services to Medicaid eligible clients it serves.
4. Appellant has been diagnosed with intractable epilepsy and mesial temporal sclerosis. (Exhibit B, pp. 2, 11, 13; Exhibit L, p. 2 and testimony).
5. On ██████████, Appellant had an initial assessment at CMH seeking assistance with finding employment at ██████████ or a quiet setting. CMH determined that the Appellant did not meet the criteria to be eligible for developmental disability services, based on the information provided to CMH it was determined that the Appellant did not have substantial functional limitations in three or more areas of major life activities. (Exhibit B, pp. 1, 10, 11-12 and testimony).
6. On ██████████, CMH issued an Adequate Action Notice denying the Appellant Targeted Case Management services through CMH. The reason for the denials was that the service/support was not medically necessary. (Exhibit C and testimony).
7. On ██████████, CMH issued another Adequate Action Notice denying the Appellant services through CMH. The reason for the denials was that there was no clear evidence that she had a Developmental Disability as defined by the Michigan Mental Health Code. (Exhibit D and testimony).
8. On ██████████, Appellant requested a second opinion from CMH. (Exhibit E and testimony).
9. On ██████████ MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 1).
10. On ██████████, a second assessment was conducted by CMH. CMH again determined that the Appellant did not meet the criteria to be eligible for developmental disability services, based on the information provided to CMH it was determined that the Appellant did not have substantial functional limitations in three or more areas of major life activities. (Exhibit F, pp. 10, 11-12 and testimony).
11. On ██████████, a second opinion/denial notice was sent to the Appellant. The reason for the denials was that there was no clear evidence that she had a Developmental Disability as defined by the Michigan Mental Health Code. (Exhibit G and testimony).

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 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 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—

Under approval from the Center for Medicaid and Medicaid Services (CMS) the Michigan Department of Community Health (MDCH) operates a section 1915(b) waiver called the Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the MDCH to provide services under the Managed Specialty Service and Supports Waiver and other State Medicaid Plan covered services. CMH must offer, either directly or under contract, a comprehensive array of services, as specified in Section 206 of the Michigan Mental Health Code, Public Act 258 of 1974, amended, and those services/supports included as part of the contract between the Department and CMH.

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On ██████████, Appellant had an initial assessment at CMH seeking assistance with finding employment at ██████████ or a quiet setting. CMH determined that the Appellant did not meet the criteria to be eligible for developmental disability services, based on the information provided to CMH it was determined that the Appellant did not have substantial functional limitations in ██████████ or more areas of major life activities. ██████████ MSW, LLMSW, Case Manager, with CMH's Community Services for the Developmentally Disabled completed the assessment and based on the information provided by the Appellant and her mother ██████████ only found substantial limitations in the areas of learning and mobility. Thus, the Appellant did not meet the definition of an individual with a developmental disability under Michigan's Mental Health Code.

Accordingly, on ██████████, CMH issued an Adequate Action Notice denying the Appellant Targeted Case Management services through CMH. The reason for the denials was that the service/support was not medically necessary. On ██████████ CMH issued another Adequate Action Notice denying the Appellant services through CMH. The reason for the denials was that there was no clear evidence that she had a Developmental Disability as defined by the Michigan Mental Health Code.

Thereafter, on ██████████ Appellant requested a second opinion, and on ██████████ a second assessment was conducted by CMH. CMH again determined that the Appellant did not meet the criteria to be eligible for developmental disability services, based on the information provided to CMH it was determined that the Appellant did not have substantial functional limitations in three or more areas of major life activities. ██████████ LMSW, another Case Manager, with CMH's Community Services for the Developmentally Disabled completed the second opinion assessment and based on the information provided by the Appellant and her mother ██████████ only found substantial limitations in the area of mobility.

██████████ did not find a substantial limitation in the area of learning because the Appellant was able to attain her high school diploma with minimal assistance, therefore learning was not considered to be a substantial limitation for the Appellant. Thus, the Appellant did not meet the definition of an individual with a developmental disability under Michigan's Mental Health Code. On ██████████, a ██████████ opinion/denial notice was sent to the Appellant.

This Administrative Law Judge does not have jurisdiction to order the CMH to provide Medicaid covered services to a beneficiary who is not eligible for those services. This Administrative Law Judge determines that the Appellant is not eligible for CMH Medicaid covered services for the reasons discussed below.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility, Section 1.6* makes the distinction between the CMH responsibility and the Medicaid Health Plan (MHP) responsibility for Medicaid specialized ambulatory mental health benefits. The Medicaid Provider Manual provides:

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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.

<p>In general, MHPs are responsible for outpatient mental health in the following situations:</p> <ul style="list-style-type: none"><input type="checkbox"/> The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal clinical (self/other harm risk) instability.<input type="checkbox"/> The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the	<p>In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:</p> <ul style="list-style-type: none"><input type="checkbox"/> The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, <u>and substantial impairment in ability to perform daily living activities</u> (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills).<input type="checkbox"/> The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional
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<p>condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.</p>	<p>impairments, promote recovery and/or prevent relapse.</p> <p><input type="checkbox"/> The beneficiary has been treated by the MHP for mild/moderate symptomatology and temporary or limited functional impairments and has exhausted the 20-visit maximum for the calendar year. (Exhausting the 20-visit maximum is not necessary prior to referring complex cases to PIHP/CMHSP.) The MHP's mental health consultant and the PIHP/CMHSP medical director concur that additional treatment through the PIHP/CMHSP is medically necessary and can reasonably be expected to achieve the intended purpose (i.e., improvement in the beneficiary's condition) of the additional treatment.</p>
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[*Medicaid Provider Manual, Mental Health and Substance Abuse, §1.6 Beneficiary Eligibility Section*, January 1, 2015, p. 3, emphasis added].

The definition section contained in the Mental Health Code, specifically MCL 330.1100a(21), defines "Developmental disability" as follows:

"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.

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- iii. Is likely to continue indefinitely.
- iv. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - b. Self-care.
 - c. Receptive and expressive language.
 - d. Learning.
 - e. Mobility.
 - f. Self-direction.
 - g. Capacity for independent living.
 - h. Economic self-sufficiency.
 - i. 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.
 - i. 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.

The CMH must follow the Department's Medicaid Provider Manual when approving mental health services to an applicant, and the CMH must apply the medical necessity criteria found within the Medicaid Provider Manual. The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5*, January 1, 2015 lists the criteria the CMH must apply as follows:

2.5.A. Medical Necessity Criteria

Mental health, developmental disabilities, and substance abuse services are supports, services and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or

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- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other
- individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance
- abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;

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- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
 - deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
 - experimental or investigational in nature; or
 - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. [pp. 12-14].

Appellant's mother testified that they have struggled with controlling the Appellant's seizures for many years. She said medications prescribed by a neurologist did not help. Appellant's mother said the Appellant had an IEP and was able to graduate from high school, but was not successful at the community college. She said they went to ██████████ ██████████), but because she wasn't able to get her seizures under

control ██████████ was not able to help the Appellant. Appellant's mother said due to her seizures the Appellant is not able to obtain competitive employment and that is why they are seeking help from CMH.

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Appellant's mother alleged that the Appellant was evaluated in the hospital for possible surgery, but said they could not find a way to help the Appellant. She also indicated the Appellant was evaluated for ██████ in ██████████, and it was determined that the Appellant's weaknesses were making sense of complex verbal information and using verbal abilities to solve problems. Appellant's mother said ██████ concluded that the Appellant would have difficulty with completing college courses and becoming competitively employed. She said she believed the Appellant would do well with a job coach.

Appellant's mother noted that the Appellant qualified for Social Security Disability Income and she said they determined Appellant could not have competitive employment but could work with a job coach. Appellant's mother further noted that Appellant's counselor at ██████ recommended that the Appellant receive services from CMH. She said she feels that CMH did not take into consideration the psychological evaluation or the recommendation by ██████ that the Appellant receive CMH services. Appellant mother said that she believes that CMH thinks they should have been able to get the Appellant's seizures under control and that is why they did not find her eligible for services. Appellant's mother also alleged that CMH skewed their assessments of the Appellant because of her beliefs in faith healing.

In this case, the CMH applied the proper eligibility criteria to determine whether Appellant was eligible for Medicaid Covered mental health services and properly determined she was not. The information available to the CMH at the time it determined the Appellant was not eligible for services showed she did not meet the eligibility criteria to receive services as an adult with a developmental disability. The testimony and documentary evidence submitted by CMH's witnesses established that the Appellant did not have a qualifying diagnosis of a developmental disability. Furthermore, she did not present with substantial limitations in 3 or more areas of major life activity.

The testimony of the Appellant's mother does not change the previous decision of CMH. Appellant did not establish that she has a developmental disability which would qualify her for services through CMH. The preponderance of the evidence submitted in this case does not establish that the Appellant meets the statutory definition of an adult with a developmental disability. Accordingly, the Appellant does not meet the eligibility criteria for Medicaid Specialty Supports and Services through CMH.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly determined that the Appellant does not meet the eligibility

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requirements for Medicaid Specialty Supports and Services through CMH.

IT IS THEREFORE ORDERED THAT:

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

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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.