

**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. 15-013414 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 Appellant's request for hearing.

After due notice, an in-person hearing was held on ██████████ ██████████ ██████████ appeared on Appellant's behalf. Appellant; ██████████ Appellant's father; and ██████████ Appellant's mother; testified as witnesses for Appellant. ██████████ ██████████ Assistant Manager of Due Process, represented the Respondent ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████, Access Screener, and ██████████ ██████████, Clinical Analyst, testified as witnesses for Respondent. ██████████ ██████████, Manager of Due Process, was also present for ██████████.

ISSUE

Did ██████████ 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 Medicaid beneficiary who has been diagnosed with, among other conditions, Tetralogy of ██████████; Cognitive Disorder NOS; and persistent motor delay. (Exhibit 3, page 1; Exhibit 4, page 1; Exhibit A, page 9).
2. A ██████████ evaluation using the Wechsler Intelligence Scale for Children IV found that Appellant was borderline in verbal comprehension, working memory and processing speed, as well as extremely low in perceptual reasoning and Full Scale I.Q. (Exhibit 7, page 2).

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3. Appellant attended ██████████ and, in a Multidisciplinary Evaluation Report/Re-Evaluation conducted in ██████, the school psychologist concluded:

[Appellant is a ██████ grade student at ██████████ ██████. She has been certified as a student with an Other Health Impairment throughout her school career as a result of her medical diagnosis of ██████████. ██████ scored in the Extremely Low range on this cognitive assessment (SS=66). She also demonstrated significant weakness in terms of her adaptive functioning (Adaptive Behavior Composite score = 76). Standardized assessment of academic achievement reveals that [Appellant] is functioning in the very low range in reading (SS=67) and math (SS=37) and in the low range in writing (SS=72). The inadequate achievement is not primarily the result of cultural factors, environmental or economic disadvantage or limited English proficiency. The suspected disability interferes with [Appellant's] access to and progress in general education to the degree that [Appellant] requires special education programs or services.

Exhibit 7, pages 6-7

4. At school, Appellant was deemed eligible for special education and had an Individualized Education Program (IEP). (Exhibit 6, pages 1-13).
5. As part of that IEP, Appellant received support for reading comprehension and math, in addition to speech and language consultation services, and accommodations such as extended time for all assignments; audio support; copies of class notes; clarification and repetition of directions; use of a calculator; and study guides provided prior to assessment. (Exhibit 6, pages 3-4, 9).
6. The school also considered Extended School Year services for Appellant, but those services were not deemed necessary. (Exhibit 6, page 11).
7. Appellant's IEP further provided that she spend ██████ hours per week in General Education Instruction and ██████ hours per week in Special Education Instruction. (Exhibit 6, page 11).
8. Appellant graduated from her high school and, in a Summary of Performance Report dated ██████████, Appellant's school noted:

██████████ was able to graduate with a diploma in ██████ years from ██████████ ██████████. Although she had a personal curriculum and was not required to take algebra II, she maintained a high grade point average ██████ taking Learning Resource Classes in the areas of Language Arts, math, social studies and science. She also did very well in her elective classes based on her hard work and persistence.

* * *

The students [sic] disability affects how she thinks, it is hard for her to remember. It also affects her learning because she struggles to keep information at the front of her learning.

* * *

██████████ is persistent in her quest to receive excellent grades. She will work hard and ask questions until she is satisfied in understanding the answers.

Exhibit 6, page 15

9. After graduating, Appellant has accompanied her mother to her mother's job, where Appellant's mother works ██████ hours every other week, and has been helping out with basic tasks while under her mother's supervision. (Testimony of Appellant's mother).
10. At home, Appellant's mother is generally there to monitor Appellant during the day, but Appellant is primarily left on her own and Appellant spends time on her own activities, including reading, playing computer games, and watching television. (Testimony of Appellant; Testimony of Appellant's mother).
11. Appellant is also left home alone at times and, if her parents are going to be gone from the morning to the evening, they will make sure that she eats before they leave and that they have other food ready for her while they are gone. (Testimony of Appellant's father).
12. Appellant applied for services through ██████████ and, on ██████████ the Respondent's Access Screener conducted an Access Screening with Appellant and her parents. (Exhibit A, pages 4-16).

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13. The screener did not conduct any independent testing and relied solely on the reports of Appellant and her parents and the documents they brought in. (Testimony of Respondent's Access Screener).
14. During the screening, it was determined that Appellant has a mental and/or physical impairment that manifested before the age of ██████████ and that the impairment is likely to continue indefinitely. (Exhibit A, page 7).
15. It was also determined that Appellant has substantial functional limitations in two areas of major life activity: Capacity for independent living and Economic self-sufficiency. (Exhibit A, page 8).
16. It was further determined that Appellant does not have substantial functional limitations in five areas of major life activity: Self-care; Receptive and expressive language; Learning; Mobility; and Self-direction.
17. With respect to Learning specifically, the Respondent's Access Screener noted:

Learning: ██████████ earned her high school diploma this year. ██████████ was able to perform basic math skills today (addition, subtraction, multiplication). She contends that she can count "pretty high" – at least to "the 100's". ██████████ states that she worked at various jobs through a school program – unpaid. ██████████ states that through the work programs, she has helped kids read and write, organized things, took inventory, and put food in containers to be packaged up. ██████████ states that she knows how to use a computer; likes to read, uses the painting app reportedly to draw.

Exhibit A, page 8

18. With respect to Self-Direction specifically, the Respondent's Access Screener noted:

Self-Direction: ██████████ reports that is "pretty much" self-directed. ██████████ was able to say what to do in the event of a fire (with some prompting) and she was able to appropriately answer what to do if a stranger were knocking at her door. ██████████ states that she takes her vitamins and medications independently.

██████y reports that she has stayed home alone for █████ hours at a time. She reports that she likes to watch tv and play on the computer when home alone.

Exhibit A, page 8

19. Based on the findings that Appellant's impairment only results in substantial functional limitations in two areas of major life activities, the Respondent's Access Screener determined that Appellant was ineligible for services and, on the same day of the screening, she sent Appellant written notice that her request for services was denied. (Exhibit 5, pages 1-2; Exhibit A, pages 2-3).
20. On ██████████, Appellant requested a second opinion. (Exhibit A, page 20).
21. On ██████████, the Respondent's Clinical Analyst conducted a face-to-face interview with Appellant and Appellant's parents. (Exhibit A, pages 18-20).
22. Following that interview, the Respondent's Clinical Analyst concluded in part:

Learning: █████ recently graduated in █████ with a high school diploma from ██████████. █████ told this writer her favorite subject in school is language arts. █████ met the goals in her IEP and was mainstreamed for most of the day. █████ can perform basic math skill and read. Per her parent's verbal report, █████ takes a long time to [Exhibit cut off] unpaid jobs. █████ has a cell phone she knows how to use and also knows how to use a computer. █████ does not demonstrate substantial functional limitations in this area.

* * *

Self-Direction: █████ is able to get up on her own and complete most of her skills of daily living independently. She is able to prepare her own snacks and use a microwave. █████ goes to work with her mother and reportedly does well and enjoys it. She enjoys spending

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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.

contracts with 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 in the pertinent part of the applicable version of the MPM that: "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." See MPM, July 1, 2015 version, Mental Health/Substance Abuse Chapter, pages 3-4.

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Here, Appellant only applied for services on the basis that she is a Medicaid beneficiary with a developmental disability. With respect to developmental disabilities, the Mental Health Code 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)

Pursuant to the above policy and statute, [REDACTED] denied Appellant's request for services in this case on the basis that she is not a Medicaid beneficiary with a developmental disability. Specifically, its witnesses both testified regarding their

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determinations and the basis for those determinations found in the reports made by Appellant and her parents. In addition to reiterating what was written in her report, the Respondent's Clinical Analyst also testified that her interview with Appellant and Appellant's parents took approximately one to two hours; the parents were part of the interview and their reports were consistent with what Appellant was saying; and that she was aware of Appellant's I.Q. score, but that it is just one factor in her determination. The Clinical Analyst also elaborated on what she believes the area of Self-direction encompasses and opined that, while Appellant has limitations in the areas of Learning and Self-direction, those limitations are not substantial as they do not present a considerable hindrance to Appellant completely life function. She also noted that Appellant's school has different criteria for special education services that the ██████████ has for developmental disability services.

In response, Appellant testified regarding her classes at school; types of classes she did not take; her medical issues; and the job assistance she is now receiving. She also testified that she has opened a bank account and applied for SSI with the help of her parents, but that she does not know what SSI is. Appellant further testified that she brushes her teeth on her own; occasionally does laundry; completes toileting and dressing on her own; usually bathes on her own, with help from her parents at times; and takes her medications on her own, though she could not list all of them. She also testified that she uses a laptop to play games and go on the internet and that, if there was a fire, she would put it out and call 911. Appellant further demonstrated her limited math skills and unsuccessfully attempted to explain common idioms or expressions. Appellant stated that she is able to read and she described what books she liked. She also stated, in response to a question about her future, that she would like to work with kids and maybe live in Hawaii. She does not have a legal guardian and testified that she signs papers for herself.

Appellant's father also testified that Appellant's stroke affected her balance, memory, and ability to process data. He also stated that Appellant has limited reading and math skills and that her parents were involved in her education and the development of personal curriculum needed for her to complete high school. He further testified as to the accommodations Appellant received at school and the assistance her parents would provide at home. According to Appellant's father's testimony, Appellant is okay with general day-to-day things, but needs assistance if there is something special to do or if things changes, such as new medications being prescribed. Appellant's father also testified that Appellant can be left alone at home from the morning to the evening, but that she has to eat a meal before her parents leave and they also have other food prepared for her. He further testified that she will possibly complete some of the instructions he gives her in the morning. Appellant's father also testified that Appellant cannot go anywhere on her own.

Appellant's mother further testified that she works ████████ hours every other week, and that Appellant now comes along and does some basic tasks under the mother's supervision. She also testified that Appellant generally does her own thing during the

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day at home, but that the mother does have to remind her to complete tasks, such as showering.

Appellant bears the burden of proving by a preponderance of the evidence that ██████████ erred in denying her request for services.

It is undisputed that Appellant has a mental or physical impairment, or a combination of mental and physical impairments, that manifested before she was ██████████ years old and the impairment is likely to continue indefinitely. It is also undisputed that Appellant does not have substantial functional limitations in the areas of major life activity of Self-care, Receptive and expressive language and Mobility, but that she does have substantial functional limitations in the areas of major life activity of Capacity for independent living and Economic self-sufficiency.

Accordingly, to meet the criteria for having a developmental disability, Appellant would have to have a substantial functional limitation in either the area of major life activity of Learning or the area of major life activity of Self-direction. Respondent found that Appellant did not while Appellant argues that she has a substantial functional limitation in both areas.

With respect to the area of Learning, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proving that ██████████ erred in determining that she did not have a substantial functional limitation. Appellant has a low I.Q. and specific issues with her perceptual reasoning, memory, and processing speed, have been noted. However, even with those limitations, Appellant completed high school, met the goals in her IEP, and received a diploma. Moreover, while she did have an IEP, attended some special education classes and received numerous accommodations during school and assistance from parents outside of school, she also spent the vast majority of her time in general education instruction, received good grades, and her school determined that Extended School Year services were not necessary for Appellant. The record also reflects that Appellant can read and complete basic math; she knows how to use a computer, even if primarily for games; and that she has the ability to be taught to do certain jobs, either by her mother, her school, or MRS. Overall, Appellant's limitations in Learning do not rise to the level of a substantial functional limitation.

Similarly, with respect to the area of Self-direction, the undersigned Administrative Law Judge also finds that Appellant has failed to meet her burden of proving that ██████████ erred in determining that Appellant did not have a substantial functional limitation in that area. While Appellant clearly has difficulty adapting to new circumstances and both parties agree that she has substantial functional limitation in her capacity for independent living, Appellant is independent in most activities of daily living, she does not have any behavioral concerns, and she can be left home along for significant periods of time. Moreover, regardless of whether she is home alone or someone else is there, the record reflects that Appellant is generally independent and pursues her own

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interests. Appellant clearly has an impairment and limitations arising from her impairment, but Appellant has also failed to demonstrate that those limitations include a substantial functional limitation in the area of Self-direction.

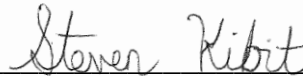
Accordingly, given the above findings, the undersigned Administrative Law Judge further finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that she has substantial functional limitations in three or more of the areas of major life activity identified in the Mental Health Code and that the Respondent'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 [REDACTED] 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]
[REDACTED]
[REDACTED]
[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.