

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

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-016289 PA

██████████

██████████

██████████

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 Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ Attorney ██████████ appeared on Appellant's behalf. Appellant and ██████████, Appellant's father and legal guardian, testified as witnesses for Appellant. ██████████ Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). ██████████, registered nurse and certified brain injury specialist, testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for admission into the Michigan Medicaid Comprehensive Traumatic Brain Injury (TBI) Rehabilitation Memorandum of Understanding (MOU) Program?

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 a ██████████ year-old Medicaid beneficiary who has been diagnosed with a nontraumatic brain injury due to anoxic encephalopathy. (Exhibit 9, page 1; Exhibit 11, page 1).
2. Appellant's anoxic brain injury was sustained as a result of a drug overdose on ██████████. (Exhibit 12, page 1; Exhibit A, pages 14, 28, 31).

██████████
Docket No. 15-016289 PA
Decision and Order

3. Appellant's comorbidities included multiple cerebral infarctions and mild right side hemiparesis. (Exhibit 11, page 1).
4. On ██████████, and ██████████, the Department received referrals/request submitted on Appellant's behalf for admission into the Medicaid TBI MOU Program. (Exhibit A, page 6).
5. Each referral/request also contained supporting documentation. (Exhibit A, pages 14-32, 39-42).
6. ██████████ is the Department's Clinical Nurse Reviewer for the program. (Testimony of Department's Clinical Nurse Reviewer).
7. She reviewed the requests and determined that they should be denied for several reasons, including the fact that Appellant's anoxic brain injury is an Acquired Brain Injury (ABI) and not a TBI, as required for admittance into the program. (Testimony of Department's Clinical Nurse Reviewer).
8. The Department has made at least one exception to the requirement that a beneficiary have a TBI to be admitted into the program. (Testimony of Department's Clinical Nurse Reviewer).
9. There are no published exception criteria and requests for exceptions are reviewed on a case-by-case basis by the Department's Clinical Nurse Reviewer and her supervisors. (Testimony of Department's Clinical Nurse Reviewer).
10. On ██████████, the Department sent Appellant written notice that his request for admission into the Medicaid TBI MOU Program had been denied. (Exhibit A, pages 35-36).
11. Specifically, that notice of denial provided:

This department is denying a request for admission to the TBI MOU Program for the following reasons:

- 1) The program requires that the qualifying brain injury be traumatic in nature, as caused by blunt force trauma to the brain – [Appellant] suffered an anoxic brain injury which is considered an acquired brain injury.
- 2) The program requires that a the beneficiary must perform a complete neuropsychological evaluation that consist of a battery of 4-6 tests that occur over two to three day period – this department received a neuro consult dated ██████████ ██████████ ██████████.

Though the documentation stated “Patient seen in brief cognitive follow up ... On testing: Patient earned an impaired score on an overall index of cognition, earning 18 out of 30 possible points on the cognitive log ...”, it was unclear as to what test was done and there was no documented evidence a complete neuropsychological evaluation had been performed as required. This department notified the case manager at ██████████ on ██████████ of the need for a complete neuropsychological evaluation but has not received one at this time.

- 3) Program Criteria state that the beneficiary must be at a Rancho Level V-VI and showing continued progress throughout the rehabilitation period. On ██████████ the psychologist documented “minimal improvement in cognition over the course of his hospitalization ... Rancho V ... prognosis poor.”
- 4) Program criteria state that the beneficiary must be continent of bowel and bladder – On ██████████, the social worker documented “He is incontinent of bowel and bladder ...”
- 5) Program criteria require that the beneficiary be off of all restraints and individual observations checks prior to coming into the program – as of ██████████ the beneficiary was still in a posey restraint at all times and required ██████ minute checks.

Exhibit A, pages 35-36

12. That same day, the Department also sent ██████████, one of the medical providers who submitted the request on Appellant’s behalf, a fax regarding the denial and reason for the denial. (Exhibit A, page 34).
13. On ██████████ sent a fax in return updating the Department on Appellant. (Exhibit A, page 38).
14. On ██████████, the Director of the Long Term Care Services Division with the Department, sent an email stating that he had

Docket No. 15-016289 PA
Decision and Order

reviewed Appellant's request with the clinical nurse reviewer and believed the denial was appropriate based on the information she shared. (Exhibit A, page 37).

15. The email also stated that: "[Appellant's] father was sent information on how to appeal the decision of the department if he feels the determination was made in error. Furthermore, we stand ready to reassess the request if additional information becomes available or if [Appellant's] condition changes." (Exhibit A, page 37).
16. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding the denial of Appellant's request for admission into the Medicaid TBI MOU Program. (Exhibit A, pages 4-10).
17. On or about [REDACTED], Appellant's guardian/father provided further information to the Department. (Exhibit A, pages 42-50).
18. However, the Department's clinical nurse reviewer was told by her supervisor not to review the additional information because of the pending appeal. (Testimony of Clinical Nurse Reviewer).
19. Appellant's guardian/father also had a third referral/application for the program prepared, but it was not submitted after he was advised by a manager at the Department that he would have to wait for the hearing. (Testimony of Appellant's father).

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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Section 1115 of the Social Security Act also gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid, see 42 USC 1315, and, since 1989, the State of Michigan has operated a Medicaid Comprehensive TBI Rehabilitation MOU Program pursuant to that provision and an agreement with the Centers for Medicare & Medicaid Services (CMS), see 42 USC 280b-1c; Exhibit 1, pages 1-8; Exhibit 3, pages 1-2; Exhibit A, page 13.

To meet the criteria for the Medicaid TBI MOU Program, an applicant must meet a number of requirements, including requirements that the applicant be Medicaid eligible; at least [REDACTED] years-old; an [REDACTED] citizen; medically stable; have suffered a brain

Docket No. 15-016289 PA
Decision and Order

injury that was traumatic in nature within the past 15 months; be able to complete meaningful intensive therapy; be at a Rancho Level 5-6; and be bowel/bladder trained. See Exhibit 1, pages 6-7; Exhibit 3, pages 1-2; Exhibit A, page 13.

Here, the Department denied Appellant's request for admission into the TBI MOU Program pursuant to the above criteria. Specifically, the notice of denial provided that Appellant's request was denied because Appellant's brain injury was an anoxic and acquired brain injury, and therefore not traumatic in nature as required; no completed neuropsychological evaluation was submitted as required; Appellant was at a Rancho Level V, but the prognosis for improvement was low; Appellant was incontinent; and Appellant was still in restraints at all times.

In support of that decision, the Department's witness also testified that the program is very small and that, given the information submitted in this case, Appellant did not meet the criteria for the reasons identified in the notice of denial. She also testified that, while Appellant submitted additional information after the request for hearing was filed, she was told by her supervisor not to review the additional information because of the pending appeal and therefore did not do so, but that Appellant would still not have been eligible for the program even if the additional information had been reviewed and responded to given the nature of his brain injury. The Department's witness further testified that, while the Department has made at least one exception to the requirement that a beneficiary have a TBI to be admitted into the program and requests for exceptions are reviewed on a case-by-case basis by the Department's witness and her supervisors, such exceptions are very rare and one is not warranted here given Appellant's circumstances.

In response, Appellant's father/guardian testified that, despite being told after the initial denial that the Department would reassess the request if any additional or updated information was provided, the Department declined to do so in this case when he did submit such information. He also testified that, with the updated information, Appellant now met all but one of the requirements for the program, with exception being that Appellant's brain injury was not a TBI. Appellant's father further testified that, even though Appellant did not meet that last requirement, Appellant's father was told by two different facilities that beneficiaries with anoxic brain injuries had been admitted in the past and that he believed Appellant should be granted an exception as well.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his request for admission into the TBI MOU Program.

Given the record in this case, Appellant has failed to meet that burden of proof and the Department's decision must be affirmed. While the undersigned Administrative Law Judge appreciates the frustrations of Appellant's guardian and representative regarding the processing of Appellant's application, in particular since Appellant's guardian was expressly told that he could submit additional information and did so, only to have the Department decline to consider it or issue a new decision in light of the updated

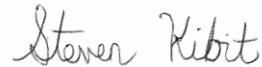
information, it is clear that Appellant simply does not meet the criteria for the program. The TBI MOU Program expressly requires that a beneficiary's neurological damage be traumatic in nature and it is undisputed in this case that Appellant's anoxic brain injury is an Acquired Brain Injury (ABI), and not a Traumatic Brain Injury (TBI). Moreover, while Appellant seeks an exception to that clear policy and the Department has made at least one such exception in the past, the undersigned Administrative Law Judge is bound by the applicable policy and, whatever the Department has done in the past, Appellant simply did not meet the applicable criteria in this case and the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's request for admission into the Medicaid Comprehensive TBI Rehabilitation MOU Program.

IT IS THEREFORE ORDERED THAT:

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



Steven 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]
[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.