

**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. 15-017661 CMH

██████████

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the Michigan Administrative Hearing System (MAHS) and the undersigned Administrative Law Judge (ALJ), pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████ and continued on ██████████ and ██████████, Attorney, appeared on behalf of the Appellant. ██████████ and ██████████ appeared as witnesses for the Appellant. ██████████, ██████████ County Corporation Counsel, represented the Respondent Community Mental Health of ██████████ (CMH). ██████████, Fair Hearing Officer, and ██████████ L.M.S.W., Mental Health Counselor, testified as witnesses for the CMH.

ISSUE

Did the Appellant meet the eligibility requirements for supports and services through CMH as someone with a developmental disability or serious mental illness?

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 Adjustment Disorder (unspecified rule out), and Autism Spectrum Disorder. (Exhibit A, pp 4, 5; Exhibit 1, p 44; Testimony.)
2. On or prior to ██████████ requested supports and services from CMH for the Appellant on the Appellant's behalf. (Exhibit A, p 2; Testimony.)

3. The Appellant attended a private Christian school until he was informally diagnosed with a learning disorder by ██████████ in the 4th or 5th grade. (Exhibit A, p 4; Exhibit 1, p 39; Testimony.)
4. From approximately ██████████ through approximately ██████████, the Appellant was married and living with his mother-in-law. In ██████████ of ██████████ Adult Protective Services (APS) was contacted and the Appellant was removed from his mother-in-law's home. (Exhibit A, p 4; Exhibit 1, p 40; Testimony.)
5. At some point in time in or around ██████████. was appointed the Appellant's plenary guardian and ██████████. was appointed the Appellant's conservator. (Testimony.)
6. On ██████████, the Appellant underwent several tests as part of a neurological assessment and psychological assessment at ██████████. Those tests included a Autism Diagnostic Observation Schedule 2 (ADOS), Wisconsin Card Sorting Test (WCST-128), California Verbal Learning Test (CVLT-II), Rey Complex Figure Test (RCFT), Wechsler Adult Intelligence Scale (WAIS-IV), Woodcock Johnson (WCJ-IV), Wide Range Achievement Test (WRAT-4), Adaptive Behavior Assessment System (ABAS-II), Independent Living Scales (ILS) and Personality Assessment Inventory (PAI). (Exhibit 1, pp 39-46.)
7. The Appellant's ADOS-2 score was ██████████ and he was found to have adaptive functioning in the borderline range with diagnosis of Adjustment Disorder (unspecified) and Autism Spectrum Disorder level 1 requiring support for social communication and level ██████████ severity requiring substantial support for restricted repetitive behaviors. (Exhibit A, p 4; Exhibit 1, pp 39-46; Testimony.)
8. The Appellant's WAIS-IV scores revealed a full scale IIQ (FSIQ) of ██████████. The score shows a general intellectual ability that is in the low average range when compared to other adults. Individual WAIS-IV scores were as follows: Verbal Comprehension (91 - average range,) Perceptual Reasoning (81 - low average range), Working Memory (86 - low average range), Processing Speed (86 – average range), General Ability (83 – superior range). (Exhibit A, pp 41, 42.)
9. On ██████████ the Appellant, ██████████ and the Mental Health Counselor participated in a face-to face interview to assist in the determination as to whether or not the Appellant qualified for MCH services. The interview included the administration of a Mini International Neuropsychiatric Inventory (M.I.N.I.) and a Level of Care Utilization System (LOCUS). The Appellant scored a 15 on the LOCUS test (minimal risk of harm, mild

functional status, significant co-morbidity, moderate recovery environment, supportive recovery environment, fully responsive to treatment and recovery, limited engagement). (Exhibit A, pp 2, 5, 7, 8, 10; Testimony.)

10. The assessment process also included a phone interview with ██████, review of a ██████, Neuropsychological Assessment Report from ██████ Psychological Consultation, phone interview with ██████, and a phone consultation with the Appellant's primary care physician's office. (Exhibit A, p 2; Testimony.)
11. During the ██████ face-to-face interview, the Appellant indicated he wanted help with weight control and to be able to drive again. ██████ indicated she wanted the Appellant to receive therapy to talk about things and to assist the Appellant in identifying when he is being treated badly and abused and to assist the Appellant in how to make choices (health choices), increase confidence, improve his relationships and learn how to use public transportation. (Exhibit A, p 4.)
12. With respect to substantial functional limitations in major life activities, the assessment further provided:

Self-care limitations:

Appellant is independent in all aspects of self-care.

Language limitations:

Appellant responded to questions appropriately and independently.. Appellant looked at ██████ with each question, for clarification however she noted that he is sensitive to her emotions and tearfulness. He follows one and two step directions. Identified barrier to following directions is anxiety. He is able to follow if/then instructions. Appellant is able to tell about experiences, however needs simple direct questions to expand on details. Monitoring is needed in regards to reporting if he is ill, however this has improved in the past month and he has begun to tell supports if sores surface on his legs. Appellant answers questions according to what he perceives as the expected answer to please others. He will lie if needed because he is afraid of upsetting others. He has lied about his weight for this reason.

Learning limitations:

Appellant had a FSIQ of 82 with all index's falling in low average range or higher.

Mobility limitations:

Appellant ambulates independently without assistance or assistive devices.

Self-direction limitations:

Appellant is vulnerable and has been exploited due to his overwhelming and pervasive inability to say no or refuse requests. He does not recognize when others are making inappropriate demands or requests. He requires assistance in recognizing risky situations, and walking away. He does not seek help from others independently. ██████ is his guardian and ██████ husband ██████, is his conservator. ██████ is not able to manage finances independently.

Independent Living limitations:

Full physical assistance is needed in budgeting money, paying bills, and transportation, and making medical appointments. Verbal prompts are needed for ensuring correct change after a purchase, making a shopping list, picking things up at home, vacuuming, and use of stove and oven. Monitoring is needed for clean up after cooking. Appellant is independent understanding the function of money, identifying denominations, selection of items for purchase, putting laundry in basket, operating washer/dryer, use of phone in a non-emergency, and entering public buildings. Appellant is able to read instruction of a package and prepare the item such as instant potatoes. Verbal prompts are needed to operate the microwave. Appellant has had limited experience in tasks of capacity for independent living. Appellant had limited training and opportunity to utilize independently living skills in his ██████ year marriage. He is now learning how to use the stove and oven. He has made instant potatoes independently including reading instructions and use of stove

top. Appellant and ██████. believe that appellant could use public transportation independently if given training. During the ten year marriage, Appellant did not have the opportunity to use or learn independent living skills. Since living with his father, Appellant is learning how to use the microwave oven, stove top and oven.

Economic limitations:

Appellant has Medicaid insurance. Appellant has applied for SSDI after having to leave a full time factory job due to a medical condition. Prior to onset of medical condition in ██████ ██████ Appellant worked full time in a factory position for ██████ years, and held a variety of other jobs prior.

Exhibit A, p 6.

13. The Appellant last worked in ██████ due to a medical condition. In ██████ the appellant tried to return to work but was unable to perform his job due to medical issues. (Exhibit A, p 4; Testimony.)
14. As of ██████ the Appellant was living with his father. (Exhibit A, p 4; Testimony.)
15. On ██████, the Mental Health Counselor spoke to ██████. on the telephone regarding the Appellant. ██████. indicated the Appellant was agreeable and gives the right answers but does not understand budgeting or other tasks and that he suffered from anxiety as well as weight and medical issues. ██████. indicated that he and his wife had contacted an attorney to rescind their guardianship over the Appellant. (Exhibit A, p 4; Testimony.)
16. On ██████ the Mental Health Counselor spoke with ██████ of ██████ to answer questions and provide clarification. ██████ told the Mental Health Counselor that the Appellant's medical condition was worsening and indicated the Appellant's need for a supervised facility to monitor medical concerns and to establish routines. (Exhibit A, p 5; Testimony.)
17. On ██████, the Mental Health Counselor spoke with Nurse Practitioner, ██████ from the Appellant's medical provider's office. ██████ indicated the Appellant's high functioning Autism Spectrum Disorder diagnosis and his poor ability to care for himself in regards to having no control over what he eats, weight issues and chronic ulcers on

his legs. ██████████ indicated her belief that the Appellant would benefit from a supervised housing placement for supervision of his activity and diet. (Exhibit A, p 5; Testimony.)

18. On ██████████, CMH sent the Appellant a notice of rights indicating the request for CMH services and supports was being denied as the Appellant did not meet eligibility criteria. (Exhibit A, p 24; Testimony.)
19. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter.

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:

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, eligibility for services through the CMH 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:

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.

In general, MHPs are responsible for outpatient mental health in the following situations: ▪ 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. ▪ 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 condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.	In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations: ▪ 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, and substantial impairment in ability to perform daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive, communicative or adaptive skills). ▪ 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 impairments, promote recovery and/or prevent relapse. ▪ The beneficiary has been treated by the MHP for
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	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.
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The "mental health conditions" listed in the table above are descriptions and are intended only as a general guide for PIHPs and MHPs in coverage determination decisions. These categories do not constitute unconditional boundaries and hence cannot provide an absolute demarcation between health plan and PIHP responsibilities for each individual beneficiary. Cases will occur which will require collaboration and negotiated understanding between the medical directors from the MHP and the PIHP. The critical clinical decision-making processes should be based on the written local agreement, common sense and the best treatment path for the beneficiary.

Medicaid beneficiaries who are not enrolled in a MHP, and whose needs do not render them eligible for specialty services and supports, receive their outpatient mental health services through the fee-for-service (FFS) Medicaid Program when 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. Refer to the Practitioner Chapter of this manual for coverages and limitations of the FFS mental health benefit.

Medicaid beneficiaries are eligible for substance abuse services if they meet the medical eligibility criteria for one or more services listed in the Substance Abuse Services Section of this chapter.

Medicaid-covered services and supports selected jointly by the beneficiary, clinician, and others during the person-centered planning process and identified in the plan of service must meet the medical necessity criteria contained in this chapter, be appropriate to the individual's needs, and meet the standards herein. A person-centered planning process that meets the standards of the Person-centered Planning Practice Guideline attached to the MDCH/PIHP contract must be used in selecting services and supports with mental health program beneficiaries who have mental illness, serious emotional disturbance, or developmental disabilities.

*MPM, April 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 3-4
(Emphasis added by ALJ)*

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

(25) "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 policies and statutes, CMH denied the Appellant's request for CMH services and supports. The Mental Health Counselor who evaluated the Appellant and determined the Appellant's eligibility, provided testimony regarding her own qualifications and ability to determine the Appellant's eligibility for services. Additionally, the Mental Health Counselor testified that, given the Appellant's LOCUS score, interviews with ██████████ Appellant, ██████████; and medical record presented, the Appellant did not meet the above criteria for services through the CMH.

In response, Appellant argued that he met the eligibility criteria for Medicaid specialty mental health services and supports as well as met the eligibility criteria as a Medicaid beneficiary with a developmental disability.

The Appellant first argued he met the eligibility criteria for Medicaid specialty mental health services and supports as his service needs exceeded the Medicaid Health Plan coverage and he has a serious mental illness. The Appellant argues the service needs requirement is met due to the fact the services being *requested* are not covered under the Medicaid Health Plan and furthermore that he has a serious mental illness. The fact someone requests services doesn't necessarily mean they meet the "need" requirement. Additionally, according to the Medicaid Provider Manual, Mental Health Chapter, in order to qualify for PIHP/CMHSP outpatient mental health services, the beneficiary must be currently or recently been seriously mentally ill by diagnosis, intensity of current signs and symptoms, and suffer from at least one substantial impairment in ability to perform daily living activities. I do not believe the evidence

presented shows the Appellant met this criteria. While it has been shown and generally agreed to that the Appellant suffers at least one substantial impairment, the evidence does not show the diagnosis to be one of serious mental illness by way of diagnosis or intensity of current signs and symptoms.

Appellant also argued, the CMH erred in their determination of severity through the use of the LOCUS test. The evidence presented however, indicated the LOCUS score was not the sole determining factor in determining severity. In fact, the evidence shows the CMH utilized a number of sources in determining severity including a question and answer session with ██████████

Appellant also argued he qualified for CMH supports and services by way of having a developmental disability that results in a substantial limitation in 3 or more major life activities. The central argument by the Appellant was that since he was appointed a guardian by the courts, he must certainly have at least 3 or more substantial functional limitations. This of course is not a satisfactory argument as the life activity of "self-direction" addresses whether or not someone has a court appointed guardian. Ironically, this is the one area that the CMH found where the Appellant suffers a substantial limitation. If policy makers wanted or wished for there to be automatic eligibility for individuals with court appointed guardians, the policy would more than likely specifically indicate that. In this case, it does not.

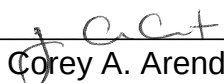
As such, based upon the *all* of the evidence presented, I find the evidence shows the Appellant did not suffer a substantial limitation in 3 or more major life activities and as such agree with the CMH that the Appellant does not meet the developmentally disabled definition. Consequently, the CMH decision to deny CMH supports and services must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Appellant was not eligible for CMH services as a person with a Developmental Disability or Serious Mental Illness.

IT IS THEREFORE ORDERED that:

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


Corey A. Arendt
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Mailed: ██████████

[REDACTED]
Docket No. 15-017661 CMH

CAA/db

cc:

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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.