

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P. O. Box 30763, Lansing, MI 48909
(800) 648-3397; Fax (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 15-020720 CMH
Case No. ██████████

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 behalf of the minor Appellant.

After due notice, a hearing was held on ██████████. ██████████, Appellant's co-guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's co-guardian and ██████████, Joak Supports Coordinator appeared as witnesses for the Appellant.

██████████, Assistant Corporation Counsel, represented Respondent ██████████ County Community Mental Health (CMH). ██████████, ██████████, testified as a witness for Respondent.

ISSUE

Did the CMH properly deny Appellant's requests for Physical Therapy (PT) and Speech and Language Therapy (SLT) evaluations and 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. The CMH is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to beneficiaries who reside in its service area.
2. Appellant is a ██████████-year-old male who at ██████████ years of age suffered a traumatic brain injury and has since been diagnosed with moderate cognitive impairment, closed head injury, seizure disorder, leukopenia and thrombocytopenia. (Respondent's Exhibit A, pages 1, 19, 31, 33, 40, 61, 69; Testimony).
3. Appellant has been receiving services through the CMH, including

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supports coordination; behavioral services; psychosocial rehabilitative programming; PT; and SLT. Appellant also receives home help services (HHS) through the Department of Health and Human Services. (Exhibit A, p 2; Testimony).

4. Since approximately [REDACTED], the Appellant has been receiving PT and SLT. (Exhibit A, p 5; Testimony).
5. Physical therapy notes from [REDACTED] indicate the Appellant experienced a loss of core strength following a discontinuance of a prior PT program. At the time of the appointment, the Appellant had short term goals of increasing knee extension and popliteal angle by 15° bilaterally; increase dorsiflexion 10° bilaterally; increase core strength/stability to transition from sitting to standing with minimal physical assistance and minimum to moderate verbal guidance and long term goals of increasing knee extension and popliteal angle by 30° bilaterally; increase dorsiflexion 20° bilaterally; increase core strength/stability to perform a standing pivot transfer with minimum physical assistance and minimum verbal guidance. (Exhibit A, pp 40-42).
6. Physical Therapy notes from [REDACTED] indicate the Appellant had severe difficulty moving from sitting to standing and continued to require moderate to maximum physical assistance. The notes also indicate moderate weakness in upper abdominal strength, lower abdominal strength, hip extensor strength, hip abductor/gluteus medius strength and knee extension/quadriceps strength. (Exhibit A, pp 43-45).
7. On or around [REDACTED], the Appellant was referred to [REDACTED] Clinic for a speech-language evaluation. At the time of the evaluation, the Appellant's parents' goals for the Appellant were to improve his word retrieval skills, increase his use of his AAC device and increase his articulation of words. At the time of the evaluation, the Appellant exhibited moderate problems with spoken language comprehension, spoken language expression and speech intelligibility; and severe language limitation with alternative speech communication. (Exhibit A, pp 58-60).
8. Speech Therapy notes from [REDACTED] indicate the Appellant continued to have severe attention deficits in his ability to sustain attention and continued severe language limitations regarding his ability to use a speech generating device. At the time of [REDACTED] evaluation, the Appellant had been able to meet one of three speech and language goals. (Exhibit A, pp 63, 64).
9. On [REDACTED], an Annual Assessment was held with respect to Appellant's services. (Exhibit A, pp 12-34).

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10. During the [REDACTED] assessment, it was noted that Appellant requires the use of a wheelchair for mobility; has limited expressive and receptive language and experiences substantial functional limitations in the areas of self-care, receptive/expressive language, mobility, learning, self-direction, capacity for independent living and economic self-sufficiency. The Appellant continues to require physical assistance to complete the majority of his activities of daily living. (Exhibit A, pp 20, 21).
11. On [REDACTED], the CMH sent the Appellant a letter indicating they were denying the Appellant's request for PT and STL services the prior authorizations were not shown to be durable and were not achieving functional improvement in a reasonable amount of time. (Exhibit A, pp 5-7; Testimony).
12. Physical Therapy notes from [REDACTED] indicate the Appellant's strength and function has progressed with therapy but that he continues to require assistance for all transfers and activities of daily living. The notes also indicate moderate weakness in lower abdominal strength, knee extension/quadriceps strength and sever weakness in hip extensor strength, hip abductor/gluteus strength and ankle dorsiflexion strength. The Appellant's father told the therapist the Appellant has seizures which cause a regression in functional mobility progress. (Exhibit A, pp 46-48).
13. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received from the Appellant a request for hearing regarding the [REDACTED] denial. (Exhibit A, pp 9, 10).

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.

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 Community Health (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

Among the services that can be provided pursuant to that waiver are PT and SLT evaluations and therapies, and, with respect to those services, the applicable version of the Medicaid Provider Manual (MPM) states:

3.22 PHYSICAL THERAPY

| Evaluation | Therapy |
|---|--|
| Physician/licensed physician's assistant-prescribed activities provided by a physical | It is anticipated that therapy will result in a functional improvement that is significant |

therapist currently licensed by the State of Michigan to determine the beneficiary's need for services and to recommend a course of treatment. A physical therapy assistant may not complete an evaluation.

to the beneficiary's ability to perform daily living tasks appropriate to his chronological, developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.

Physical therapy must be skilled (it requires the skills, knowledge, and education of a licensed physical therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed occupational therapist, family member or caregiver) would not be considered as a Medicaid cost under this coverage.

Services must be prescribed by a physician/licensed physician's assistant and may be provided on an individual or group basis by a physical therapist or a physical therapy assistant currently licensed by the State of Michigan, or a physical therapy aide who is receiving on-the-job training. The physical therapist must supervise and monitor the assistant's performance with continuous assessment of the beneficiary's progress. On-site

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| | <p>supervision of an assistant is not required. An aide performing a physical therapy service must be directly supervised by a physical therapist that is on-site. All documentation by a physical therapy assistant or aide must be reviewed and signed by the appropriately credentialed supervising physical therapist.</p> |
|--|--|

3.23 SPEECH, HEARING, AND LANGUAGE

| Evaluation | Therapy |
|---|--|
| <p>Activities provided by a licensed speech-language pathologist or licensed audiologist to determine the beneficiary's need for services and to recommend a course of treatment. A speech-language pathology assistant may not complete evaluations.</p> | <p>Diagnostic, screening, preventive, or corrective services provided on an individual or group basis, as appropriate, when referred by a physician (MD, DO). Therapy must be reasonable, medically necessary and anticipated to result in an improvement and/or elimination of the stated problem within a reasonable amount of time. An example of medically necessary therapy is when the treatment is required due to a recent change in the beneficiary's medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status were the therapy not provided. Speech therapy must be skilled (i.e., requires the skills, knowledge, and education of a licensed speech-language pathologist) to assess the beneficiary's speech/language function, develop a treatment program, and provide therapy.</p> |

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|--|---|
| | <p>Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, licensed occupational therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.</p> <p>Services may be provided by a licensed speech-language pathologist or licensed audiologist or by a speech pathology or audiology candidate (i.e., in his clinical fellowship year or having completed all requirements but has not obtained a license). All documentation by the candidate must be reviewed and signed by the appropriately licensed supervising speech-language pathologist or audiologist.</p> |
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* * *

MPM, January 1, 2016 version
Mental Health/Substance Abuse Chapter, pages 20-22

Here, the CMH denied Appellant's request for PT and SLT evaluations therapies on the basis that the services would not be anticipated to result in significant and durable functional improvements in a reasonable amount of time or would be durable. Specifically, the CMH's witness noted that, while Appellant had been receiving the services for years, the services had not eliminated the stated problems nor were goals achieved in a reasonable amount of time and that Appellant had actually declined in a number of areas.

Appellant's representative challenged those decisions on appeal and, in doing so, bears the burden of proving by a preponderance of the evidence that the CMH erred in denying the requests. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the denial in light of the information available at the time the decisions were made.

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Given the record in this case and the applicable policies, Appellant's representative has failed to meet his burden of proof and the denials must therefore be affirmed. The criteria identified above for both PT and SLT provides that it must be anticipated that the therapies will result in a significant functional improvement in a reasonable amount of time and that the improvements should be durable/maintainable. Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.


Here, Appellant's representative and witnesses argued that Appellant has demonstrated significant improvement during the times he had been receiving PT and SLT and but for a problem with one of the providers there would not have been a regression.

However, despite some minimal improvement, the record fails to demonstrate Appellant's past services have resulted in significant and durable functional improvements and there is no reason to expect that to change with additional services, as required by the applicable policy.

With respect to PT, the objective findings of improvement found in the progress notes are unpersuasive as they use the same exact boilerplate language and are unsupported by the rest of the notes, which fail to reflect significant improvement with respect to the specific therapy goals and even demonstrate that Appellant is declining in some areas, such as moderate to severe weakness in several strength areas. Similarly, the most recent annual assessment reflects that Appellant continues to have substantial limitations, despite receiving PT for years and therapy notes reveal the Appellant has shown a loss of core strength following a discontinuance of a prior PT program.

Additionally, with respect to SLT, the record demonstrates that, while Appellant has shown some improvement in his ability to categorize pictured items into two presented categories with 70% accuracy; his other therapy goals are unmet.

For the reasons discussed above, the undersigned Administrative Law Judge finds that the requested therapies in this case would not be anticipated to result in significant and durable functional improvements in a reasonable amount of time and that the CMH's decisions must therefore be affirmed.

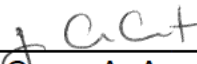

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's requests for PT and SLT evaluations and services.

IT IS THEREFORE ORDERED that:

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



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

Date Signed: January 22, 2016

Date Mailed: January 22, 2016

CAA 

cc: 

***** 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.