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. 15-008684 CMH

[redacted] [redacted] [redacted]

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 the minor Appellant's behalf.

After due notice, a telephone hearing was held on [redacted], Appellant's mother, appeared and testified on Appellant's behalf. [redacted], Appellant's representative's ex-husband, also testified as a witness for Appellant. [redacted], Director of Clinical and Support Services, represented the Respondent [redacted] Children's Program Supervisor, and [redacted], Supervisor of Intake Services, also testified as witnesses for Respondent.

ISSUE

Did [redacted] 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 a [redacted] year old who has been diagnosed with Disruptive Behavior Disorder; sleep apnea; a strong genetic predisposition for affective disorder; and developmental delays. (Exhibit 1, pages 3, 5).

2. Appellant has had chaotic living arrangements in the past and her mother/primary caregiver has also been diagnosed with a mental illness. (Exhibit 1, page 5).

3. Between [redacted] and [redacted], Appellant received services through [redacted] Infant Mental Health Department. (Testimony of [redacted].

4. In [redacted], Appellant aged out of that program. (Testimony of [redacted]

5. On [redacted] Appellant's mother applied for services through [redacted] on Appellant's behalf and [redacted] performed a MI Child Assessment with Appellant and her mother. (Exhibit B, pages 1-11).

6. During that assessment, [redacted] noted that, while Appellant was hesitant to interact with [redacted] at first, Appellant presented with a bright affect and inquisitive nature; she demonstrated an ability to entertain herself; and she displayed appropriate focus and concentration throughout the session. (Exhibit B, page 1).

7. [redacted] also noted that Appellant did become increasingly agitated, distressed and angry when limits were placed regarding toys and that the initial attempts to calm her down were unsuccessful, but that ignoring Appellant appeared to be productive as Appellant then redirected herself. (Exhibit B, page 1).

8. Appellant's mother reported that Appellant had been displaying behavior problems for the past twelve to eighteen months. (Exhibit B, page 1).

9. The behavior problems only occurred with Appellant's mother or her husband, and Appellant would kick, hit, scream, cry all day long, and refuse to listen. (Exhibit B, page 1).

10. Appellant has also hit herself on the legs or head when frustrated. (Exhibit B, page 8).

11. Appellant's behavior was fine everywhere else, including at daycare and the Head Start Program at Appellant's elementary school. (Exhibit B, pages 2-3).

12. Appellant's mother also reported that she yells and spanks Appellant as punishment, and that Appellant's mother needs help working on her own management and coping skills. (Exhibit B, pages 1, 4).

13. [redacted]t also measured Appellant under the Preschool and Early Childhood Functional Assessment Scale (PECFAS) and scored her as a [redacted] on that scale due to Appellant's moderate impairments at home and minimal impairments at school and self-harmful behavior. (Exhibit C, pages 1-3).

14. Given her assessments and findings, [redacted] determined that Appellant did not meet the criteria for services through [redacted] (Exhibit B, page 11; Testimony of [redacted]

15. [redacted]t also sent Appellant's mother written notice of the denial and referred her to her Medicaid Health Plan (MHP), [redacted]). (Testimony of [redacted]

16. Appellant's mother did not contact [redacted], but she was able have Appellant get services through a counselor. (Testimony of Appellant's representative).

17. The counselling was going well and Appellant was calming down, but it subsequently ended after the counselor became unavailable. (Testimony of Appellant's representative).

18. Appellant's mother then called around, but, because of Appellant's age and/or the fact that they were on Medicaid, she was unable to find anyone who would treat Appellant. (Testimony of Appellant's representative).

19. Appellant's mother never contacted Meridian about mental health services for Appellant. (Testimony of Appellant's representative).

20. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Exhibit 1, pages 1-5).

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, [redacted] 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:

> **1.6 BENEFICIARY ELIGIBILITY**
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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.
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In general, MHPs are responsible for outpatient mental health in the following situations:	**In general, PIHPs/CMHSPs 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.	▪ 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

	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.

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

The State of Michigan's Mental Health Code defines mental illness and serious emotional disturbance as follows:

> 2. "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

a. A substance abuse disorder.
b. A developmental disorder.
c. "V" codes in the diagnostic and statistical manual of mental disorders.

3. "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

a. A substance abuse disorder.
b. A developmental disorder.
c. A "V" code in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d

Additionally, with respect to developmental disabilities, the Mental Health Code also 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 policies and statutes, [redacted] denied Appellant's request for services in this case on the basis that she is not a Medicaid beneficiary with a serious mental illness, serious emotional disturbance or developmental disability whose needs exceed the benefits of the MHP she is enrolled in. Specifically, its witness testified that, even with her diagnoses and behavioral issues, Appellant does not meet the criteria for services given her PECFAS score and her overall behavior. [redacted]t also testified that all of Appellant's mental health needs can be met by her MHP and that she referred Appellant's mother to the plan.

In response, Appellant's mother testified that Appellant is continually abusive to her and her ex-husband, and that she cannot handle her at home or take her anywhere in the community. Specifically, Appellant will kick, hit, bite, throw tantrums or refuse to listen, while Appellant's mother will respond with yelling or spanking. Her ex-husband also testified that Appellant has been very abusive towards him, while Appellant's mother further acknowledged that Appellant and her ex-husband would push each other's buttons and that Appellant's behavioral problems are solely directed at the two of them. Appellant's mother further testified that Appellant's behaviors were being successfully being treated by a counselor, but that the counselor subsequently became unavailable and she has been unable to find anyone else who would treat Appellant given her age

and the fact that they are on Medicaid. Appellant's mother has not contacted the MHP they are enrolled in about mental health services because she has already called around.

Appellant bears the burden of proving by a preponderance of the evidence that [redacted] erred in denying her request for services.
For the reasons discussed below, the undersigned Administrative Law Judge finds that Appellant has failed to meet that burden of proof and that Respondent's decision must therefore be affirmed.

While it is undisputed that the minor Appellant has had a diagnosable mental, behavioral, or emotional disorder affecting her, for a sufficient period of time to meet the criteria for a serious emotional disturbance, *i.e.* her Disruptive Behavior Disorder, it does not appear that the diagnosis has resulted in a functional impairment that substantially interferes with or limits Appellant's functioning. Appellant has significant difficulties with her mother and her mother's ex-husband, but she is fine with everyone else and does not otherwise display any behavioral issues in daycare, school, or out the community. Appellant's mother also has her own mental health diagnosis and has acknowledged her need for assistance in working on her own management and coping skills. Overall, [redacted] assessment of Appellant under the PECFAS scale only demonstrated moderate or minimal impairments and Appellant's representative has failed to show that those findings were errors.

Additionally, even if Appellant does meet the criteria for a serious emotional disturbance, her representative has failed to show that Appellant's needs exceed their MHP benefits. In making the denial, [redacted] referred Appellant/s mother to their MHP and, while Appellant's mother did not go through [redacted], Appellant was able receive sufficient mental health services through a counselor for some time. Moreover, when that counselor became unavailable, Appellant's mother never pursued services through the MHP. According to Appellant's mother, she knows that no such services are available as she called around and was unable to find another counselor. However, the undersigned Administrative Law Judge finds her unsupported testimony regarding what services are available to be insufficient. The MHP also has case managers who can assist her and she is encouraged to contact them.

If such services do prove to be unavailable, Appellant exhausts her services through the MHP, or its services are insufficient; Appellant's mother can always re-request services through [redacted] on Appellant's behalf in the future. With respect to the decision at issue in this case however, [redacted] decision to deny Appellant's request for services must 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 Kibit

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]

***** 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.