STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 15-017161 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 Appellant's behalf.

After due notice, a telephone hearing was held on [redacted], Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. [redacted], Assistant Corporation Counsel, represented the Respondent [redacted] Community Mental Health (CMH). [redacted], [redacted] Office Manager, testified as a witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for adult residential placement?

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 Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area.

2. Appellant is [redacted] year-old male who has been diagnosed with mild cognitive impairment and Apert's syndrome and receives services through the CMH. (Exhibit A, pp 1, 20; Testimony)

3. On [redacted], Appellant's CMH annual assessment was completed. At the time of the assessment, the Appellant was on probation for aggravated stalking and residing with his parents which at the time was the least restrictive environment. (Exhibit A, pp 2, 35, 36; Testimony)

4. The appellant has had a series of legal problems related to poor judgment and impulsive behavior. (Exhibit A, p 35)

5. The Appellant has relatively strong verbal skills and is able to independently complete all personal care tasks without support as well as drive a car. (Exhibit A, pp 2, 3, 36; Testimony)

6. On [redacted], the Appellant's supports coordinator requested from CMH adult residential placement for the Appellant on behalf of the Appellant. The request was due to the supports coordinator feeling the Appellant's parents were not able to provide the kind of supervision Appellant needs and because they alleged the Appellant needs [redacted] hour supervision due to safety reasons for the community and from himself. At the time of the request, the Appellant was receiving from CMH monthly medication reviews, weekly psychotherapy sessions and [redacted] hours per week of community living supports services. (Exhibit A, pp 6, 39-41, 48; Testimony)

7. On [redacted], the CMH sent a notice to the Appellant indicating the Appellant did not meet criteria for adult residential placement. (Exhibit A, pp 6-8)

8. [redacted], Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this case. (Exhibit A, p 10-12)

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.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See* 42 CFR 440.230.

Regarding the location of such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states in part:

> **2.3 LOCATION OF SERVICE**
>
> Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.
>
> *MPM, January 1, 2015 version*
> *Mental Health/Substance Abuse Chapter, page 9*

Moreover, regarding medical necessity, the MPM also states:

> **2.5 MEDICAL NECESSITY CRITERIA**
>
> The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.
>
> **2.5.A. MEDICAL NECESSITY CRITERIA**
>
> Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:
>
> - Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
> - Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
> - Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or

- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or

- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;

- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;

- Made within federal and state standards for timeliness;

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;

- ***Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and***

- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services:

  - that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;

- that are experimental or investigational in nature; or

- ***for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or***

- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

MPM, January 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 12-14
(Emphasis added)

Pursuant to the above policies, the CMH decided to deny Appellant's request for residential placement on the basis that adult residential placement through CMH is not intended to be a housing solution. The CMH argued adult residential placement through CMH is to assist beneficiaries in stabilizing their conditions and acquiring the skills necessary to move forward into more independent levels of care by offering community living supports that are intended to assist the beneficiary in becoming independent. Not to provide safety for the community. The CMH's witness further testified that, because Appellant does not require around-the-clock care and is independent in his activities of daily living, his needs can be met in a less restrictive environment, such as a general Adult Foster Care (AFC) home with appropriate supports.

Appellant's guardian argued the Appellant needed [redacted] care and that her husband and her could no longer provide the Appellant with the care he needs.

Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her request for continuation of her adult residential

placement. Moreover, the undersigned Administrative Law Judge is limited to reviewing the CMH's decision in light of the information available at the time the decision was made.

Given the evidence and applicable policies in this case, Appellant has failed to meet his burden of proof and the CMH's decision must be affirmed. It is undisputed that Appellant continues to need services through the CMH, including medication reviews, targeted case management and CLS, but it also appears that those needs could be met in a less restrictive environment, such as an AFC home. Accordingly, the CMH's decision is affirmed.

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 request for residential placement.

IT IS THEREFORE ORDERED that:

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

_____
Corey A. Arendt
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

CAA/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.