



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: May 16, 2016  
MAHS Docket No.: 16-003686  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

### **DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner [REDACTED] and her husband [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Chief Compliance and Fair Hearings Officer; and Dr. [REDACTED], MD, Psychiatrist appeared to testify and represent the [REDACTED] – Community Mental Health [REDACTED] County (CMH or CMHOC or Respondent) Agency.

Respondent's Exhibit A pages 1-24 were admitted as evidence.

### **ISSUE**

Did the Respondent properly deny Petitioner's Prior authorization request for Electroconvulsive Therapy (ECT)

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a Medicaid beneficiary, who is receiving services through [REDACTED].
2. Petitioner has a history of crack cocaine and marijuana usage, as well as several other diagnoses in relation to her mental health including Dysthymia, Post-traumatic Stress Disorder and Major Depressive Disorder.

3. On [REDACTED], Petitioner commenced services with [REDACTED].
4. CMH is under contract with the Department of Health and Human Services to provide Medicaid covered services to people who reside in the CMH service area.
5. On several occasions, Petitioner has received medical reviews which indicate that psychotropic medications would be the most appropriate means of addressing her mental health issues.
6. On [REDACTED], Petitioner filed a request with CMH for approval of ECT treatment.
7. On [REDACTED] [REDACTED] [REDACTED] Respondent's Medical Director reviewed Petitioner's Medical documents presented from Pine Rest and University of Michigan in which it was suggested that ECT would be an appropriate course of treatment: "For all of the extensive documentation of depression, her history is more suggestive of being overwhelmed and sad/depressed but also very anxious. I would quibble with the fact that this isn't even addressed in passing...She is not a classic 'Major Depressive' but rather a very severe Dysthymic and not someone I would expect to actually benefit from ECT- which I would suspect is being suggested as a way to further delay, perhaps looking at Axis II (Dependent personality Disorder) and certainly her selection of two quite unsupportive and in fact exacerbating relationships...I don't believe ECT will make any difference. Possibly a trial on a mood stabilizer or maybe a stimulant.
8. On [REDACTED], [REDACTED] sent Petitioner a Notice of rights due to Denial of Services stating that the ECT treatment is denied as not medically necessary.
9. On [REDACTED], the Michigan Administrative Hearing system received a Request or Hearing to contest the denial of ECT.

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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.

*42 CFR 430.0*

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 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) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

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.

The CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

Community Mental Health of ██████████ County Operational Guideline Chapter 5, Section 5, Electroconvulsive Therapy (ECT) eligibility Criteria indicates that a person must meet 1, 2 and 3 plus one of 4-10.

1. The person is in an inpatient facility. If treatment is needed on an outpatient basis, prior arrangements for payment must be made before starting the treatment. *And,*
2. ECT is most appropriate in those conditions where such efficacy has been established: Delusional and severe endogenous depressions, acute mania, and certain schizophrenic conditions. *And,*
3. The person voluntarily agrees to this form of intervention/treatment and there is a signed consent by the person or if too ill to consent, a court appointed guardian has signed consent. *And,*
4. There is an immediate risk of suicide (when not manageable by other means). Acute manic episode - especially when characterized by clouded sensorium, dehydration, extreme psychomotor agitation, high risk for serious medical complications or death through exhaustion and non-responsiveness to pharmacological interventions. *Or,*
5. There is severe and unremitting nature of the patient's emotional suffering or extreme incapacitation. *Or,*
6. The person is in severe depression or psychosis during the first trimester of pregnancy. *Or,*
7. The patient has a severe affective disorder and has not responded to adequate (appropriate dose and duration of treatment) psychopharmacologic treatment. *Or,*
8. The patient's acute symptoms are so severe (manic excitement, active suicidal behavior, psychomotor retardation, or catatonia) that a rapid and dramatic response is required. *Or,*
9. The patient has a history of depressive episodes that have responded successfully to previous ECT treatment. (Respondent's Exhibit A pages 14-15)

4. Using criteria for medical necessity, a CMHSP may:

4.1 Deny services that (a) are deemed ineffective for a given condition based upon professional and scientifically recognized and accepted standards of care; (b) are experimental or investigational in nature; or (c) services for which there exists an appropriate, efficacious, less-restrictive and cost effective alternative, setting or support, that otherwise satisfies the standards for medically necessary services; (Respondent's Exhibit A pages 16)

Petitioner testified that she is depressed. She thinks about suicide every day. She has taken 17 different medications and thinks that ECT would be beneficial.

Medical records from February 22, 2016, indicate that Petitioner is diagnosed with 300.4 Dysthymia, 309.81 Post Traumatic Stress disorder; 305.20 Cannabis Abuse in remission; 305.60 Cocaine Abuse in remission. She does have major depression. (Respondent's Exhibit A page 8)

The Medical Director denied the request stating: For all of the extensive documentation of depression, her history is more suggestive of being overwhelmed and sad/depressed but also very anxious. I would quibble with the fact that this isn't even addressed in passing...She is not a classic 'Major Depressive' but rather a very severe Dysthymic and not someone I would expect to actually benefit from ECT- which I would suspect is being suggested as a way to further delay, perhaps looking at Axis II (Dependent personality Disorder) and certainly her selection of two quite unsupportive and in fact exacerbating relationships...I don't believe ECT will make any difference. Possibly a trial on a mood stabilizer or maybe a stimulant.

This Administrative Law Judge finds that CMH has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner has not established that her condition meets the criteria to be approved for ECT. The evidence on the record indicates that the Medical Director's opinion is that the ECT would be unlikely to be beneficial. Petitioner is not in immediate danger of risk of suicide. There is efficacious treatment in the form of two medications that Petitioner admits have been helpful. Petitioner has no suicide attempts. Petitioner has not pursued ECT on three other occasions that she got a recommendation for the service because she considered the service to be too invasive. Petitioner is not classically 'clinically depressed', according to the Medical Director and ECT is not particularly effective for anxiety, which Petitioner does have. (Testimony) The Doctor started Petitioner on Pristiq as Petitioner never had a long enough trial of that medication and recommended adding Latuda to augment the antidepressant. The CMHOC decision to deny ECT treatment must be upheld.

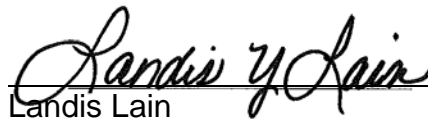
**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMHOC properly denied authorization for Electroconvulsive Therapy for Petitioner because Petitioner submitted insufficient evidence to establish medical necessity for the treatment.

**IT IS THEREFORE ORDERED** that

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

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Landis Lain  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**Petitioner**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**DHHS Department Rep.**

[REDACTED]

**DHHS-Location Contact**

[REDACTED]