



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: July 18, 2016  
MAHS Docket No.: 16-006001  
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 July 13, 2016. [REDACTED], Supports Coordinator and Authorized Hearings Representative; [REDACTED], Clinical Therapist; [REDACTED], Behaviorist; [REDACTED], grandmother, and father [REDACTED] appeared to testify on behalf of the Petitioner. Attorney [REDACTED] (P [REDACTED]) represented the [REDACTED] County Community Mental Health (MCCMH). [REDACTED], Program supervisor testified on behalf of MCCMH.

Respondent's Exhibits 1-5 (pages 1-20) were admitted as evidence.

### **ISSUE**

Did the MCCMH properly deny Petitioner's request for Serious Emotional Disturbance (SED) program 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. Petitioner's son, hereinafter Petitioner, ([REDACTED]) is a thirteen year old boy date of birth [REDACTED].
2. Petitioner is a Medicaid beneficiary.
3. Petitioner is diagnosed with bipolar disorder, intermittent explosive disorder, and mild intellectual disabilities. He also has a rule-out diagnosis of autism.

4. Petitioner currently resides in [REDACTED] Township with his father, sister and grandmother.
5. Petitioner attends [REDACTED] School, where he is supported fulltime in a classroom for students with cognitive impairments. He is supported at school with a modified curriculum, direct speech and language services, and consultative social work services.
6. Petitioner is covered by [REDACTED] County Medicaid and has been receiving MCCMH authorized services since [REDACTED]. Currently his authorized services include: speech and language therapy, 2 per week; home care family training, 2 per month; supports coordination 16 per month; individual psychotherapy, 16 per authorization; family therapy, 16 per authorization; medication review, once per month and supports coordination.
7. In February 2016, Petitioner [REDACTED] requested long term placement at [REDACTED], because the family determined that [REDACTED]'s needs could not be managed at home.
8. Access determined that placement at [REDACTED] was not medically necessary and that other treatment avenues were available to meet [REDACTED] needs.
9. Petitioner requested a Local dispute resolution hearing to review that decision.
10. The decision to deny Petitioner's request for placement was affirmed by Hearing Officer [REDACTED]. (Respondent's Exhibit 3, page 10)
11. The Hearing Officer determined that [REDACTED]'s 'current array of services as authorized is not appropriate for meeting [REDACTED]'s needs, however, extended hospitalization is not the appropriate clinical alternative.' (Respondent's Exhibit 3, page 13)
12. Because the hearing officer determined that [REDACTED]'s symptoms were predominately behavioral, they would best be addressed in the home and community settings and situations in which they occur. (Respondent's Exhibit 3, page 13)
13. Accordingly, the hearing officer determined that an appropriate array of clinical services should include the following: Evaluation for the SED waiver; a current functional behavioral assessment and appropriate behavioral services; evaluation for ABA services; trauma focused cognitive behavioral therapy (TFCBT); sensory integration therapy; and appropriate family supports, which may include family therapy, respite services, and a parent support partner. (Respondent's Exhibit 3 page 14)

## 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).

Pertinent department policy states:

Refer to the Provider Qualifications on the MDHHS website for specific provider qualifications for each covered service. (Refer to the Directory Appendix for website information.)

## **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.

***Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, July 1, 2016, Page 13***

## SECTION 1 – GENERAL INFORMATION

The Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW) Program provides services that are enhancements or additions to Medicaid state plan coverage for children up to age 21 with serious emotional disturbance (SED) who are enrolled in the SEDW. MDHHS operates the SEDW through contracts with the CMHSPs. The SEDW is a fee-for-service program administered by the CMHSP in partnership with other community agencies. The CMSHP will

be held financially responsible for any costs authorized by the CMHSP and incurred on behalf of a SEDW beneficiary.

### **1.1 KEY PROVISIONS**

The SEDW enables Medicaid to fund necessary home and community-based services for children up to age 21 with SED who meet the criteria for admission to a state inpatient psychiatric hospital and who are at risk of hospitalization without waiver services. The CMHSP is responsible for assessment of potential waiver candidates.

Application for the SEDW is made through the CMHSP. The CMHSP is responsible for the coordination of the SEDW services. The Wraparound Facilitator, the child and his family and friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in an IPOS. A SEDW beneficiary must receive at least one SED waiver service per month in order to retain eligibility.

### **1.2 ELIGIBILITY**

To be eligible for this waiver, the child must meet all of the following criteria.

- Live in a participating county (refer to the Coverage Area subsection in this chapter); OR
- Live in foster care in a non-participating county pursuant to placement by MDHHS or the court of a participating county, with SEDW oversight by a participating county's CMHSP; AND
- Reside with the birth or adoptive family or have a plan to return to the birth or adoptive home; OR
- Reside with a legal guardian; OR
- Reside in a foster home with a permanency plan; OR
- Be age 18 or age 19 and live independently with supports; AND
- Meet current MDHHS criteria for the state psychiatric hospital for children; AND
- Medicaid eligibility criteria and become a Medicaid beneficiary; AND As appropriate for age, functional limitation will be identified using the Child and Adolescent Functional Assessment Scale (CAFAS®) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS®):

- CAFAS® score of 90 or greater for children age 7 to 12; OR
- CAFAS® score of 120 or greater for children age 13 to 18; OR  
For children age 3 to 7, elevated PECFAS® subscale scores in at least one of these areas: self-harmful behaviors, mood/emotions, thinking/communicating or behavior towards others; AND
- Be under the age of 18 when approved for the waiver. If a child on the SEDW turns 18, continues to meet all non-age-related eligibility criteria, and continues to need waiver services, the child can remain on the waiver up to their 21st birthday.

### **1.3 COVERAGE AREA**

Waiver services are limited to eligible children (up to the federally-approved maximums) living in the counties whose CMHSPs have:

- An approved SED Waiver plan with MDHHS;
- Demonstrated strong collaboration with essential community partners;
- The capacity to provide intensive community-based services; and
- The fiscal capacity to manage interagency funding appropriately, or have been approved to participate in the MDHHS SED Waiver Pilot program.

***Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services  
Children's Serious Emotional Disturbance  
Home and Community-Based Services Waiver  
Appendix Page B2, Date: July 1, 2016,***

MCCMH denied Petitioner's request for SED Waiver services, stating that Petitioner does not meet medical necessity for the services. (Respondent's Exhibit 1 page 6) Further the MCCMH determined that Petitioner's primary diagnosis and the primary limitation on his functioning is a cognitive impairment, rather than an emotional impairment (SED). This is confirmed by his March 2016 Individual Education Plan (IEP) school report that identified Petitioner's primary eligibility for special education services as "cognitive impairment" and contemporaneous case notes in the FOCUS system. (Exhibit 4 page 16). Although Petitioner is 8<sup>th</sup> grade level, the IEP states that academically he functions at the 2<sup>nd</sup> grade level (1.9 grade equivalent). At the time of

the request for hearing Petitioner's family had not pursued any of the other services to evaluate and qualify him for appropriate services to address his cognitive impairment.

Petitioner's witnesses state that Petitioner engages in explosive tantrums and is dangerous to be around. He is unpredictable and displays inappropriate sexual behaviors. They would like out of home care for three months.

This Administrative Law Judge finds that CMH has established by the necessary, competent and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was not eligible to received SED Waiver program services under the circumstances. It has been determined that Petitioner does not meet current MDHHS criteria for the state psychiatric hospital for children. It has been determined that SED services are not diagnostically appropriate, because the services are not "consistent with [REDACTED]'s diagnosis, symptomology and functional impairments. Petitioner and his representatives, with the assistance of CMH must pursue more appropriate clinical services to access and treat his predominate cognitive impairment diagnosis that is documented in the recent school IEP.


### **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 Petitioner was not eligible to receive the SED Waiver Program.

**IT IS THEREFORE ORDERED** that

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

LL [REDACTED]

  
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

**Counsel for Respondent**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]

**DHHS-Location Contact**

[REDACTED]

**Petitioner**

[REDACTED]