



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: January 5, 2017  
MAHS Docket No.: 16-011776  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**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 December 7, 2016. [REDACTED], mother and Authorized Hearing Representative, appeared on behalf of the Petitioner. [REDACTED], Fair Hearings Officer ("FHO"), represented the Respondent, [REDACTED] County Community Mental Health ("CMH"). [REDACTED], Program Administrator Youth and Family Services ("PAYFS"), appeared as a witness for the CMH.

The hearing was originally scheduled for October 18, 2016. Petitioner's request for adjournment was granted and the hearing was re-scheduled for December 7, 2016.

During the hearing proceeding, the CMH's Hearing Summary packet was admitted as marked, Exhibits A-C; and Petitioner's documents were admitted as Exhibit 1, pp. 1-3.

**ISSUE**

Did the CMH properly propose a termination of Petitioner's services through the Children's Home and Community-Based Services Waiver (CWP) program because Petitioner had been residing in an institution for over 30 days without a CWP service provided in the community and continued to be in an institution without a discharge date in the next 30 days?

**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 14 year old (date of birth [REDACTED]) Medicaid beneficiary. (Exhibit B)

2. Petitioner was receiving services through the CWP.
3. On April 20, 2016, Petitioner was placed at [REDACTED]. (Exhibit B, p. 2; Testimony of FHO)
4. On May 26, 2016, Petitioner was placed at [REDACTED]. (Testimony of FHO)
5. A CWP service, family training, was last provided for Petitioner's case to Petitioner's mother on June 22, 2016. (Exhibit B, p. 12; Testimony of FHO and PAYFS)
6. On July 14, 2016, a Notice and Hearing Rights was issued to Petitioner stating services would be terminated effective July 31, 2016, because Petitioner had been residing in an institution for over 30 days without a CWP service provided in the community and continues to be in an institution without a discharge date in the next 30 days. (Exhibit A, pp. 1-2)
7. Petitioner's mother reported that she did not receive the July 14, 2016, Notice and Hearing Rights. (Testimony of FHO)
8. On July 26, 2016, a Notice and Hearing Rights was issued to Petitioner stating services would be terminated effective August 7, 2016, because Petitioner had been residing in an institution for over 30 days without a CWP service provided in the community and continues to be in an institution without a discharge date in the next 30 days. (Exhibit A, pp. 3-4)
9. On August 26, 2016, the request for hearing filed on Petitioner's behalf was received by the Michigan Administrative Hearing System. (Hearing Request)

### **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).

The Medicaid Provider Manual (MPM) addresses the CWP, including eligibility criteria:

#### **SECTION 14 – CHILDREN’S HOME AND COMMUNITY-BASED SERVICES WAIVER (CWP)**

The Children’s Home and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

The Children’s Waiver is a fee-for-service program administered by the CMHSP. The CMHSP will be held financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by the

CMHSP and exceed the Medicaid fee screens or amount, duration and scope parameters.

Services, equipment and Environmental Accessibility Adaptations (EAAs) that require prior authorization from MDHHS must be submitted to the CWP Clinical Review Team at MDHHS. The team is comprised of a physician, registered nurse, psychologist, and licensed master's social worker with consultation by a building specialist and an occupational therapist.

#### **14.1 KEY PROVISIONS**

The CWP enables Medicaid to fund necessary home- and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

The CMHSP is responsible for assessment of potential waiver candidates. The CMHSP is also responsible for referring potential waiver candidates by completing the CWP "pre-screen" form and sending it to the MDHHS to determine priority rating.

Application for the CWP is made through the CMHSP. The CMHSP is responsible for the coordination of the child's waiver services. The case manager, the child and his family, 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 the Individual Plan of Services (IPOS). The IPOS must be reviewed, approved and signed by the physician.

A CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

#### **14.2 ELIGIBILITY**

The following eligibility requirements must be met:

- The child must have a developmental disability (as defined in Michigan state law), be less than 18 years of age and in need of habilitation services.
- The child must have a score on the Global Assessment of Functioning (GAF) Scale of 50 or below.

- The child must reside with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian for that child under the laws of the State of Michigan, provided that the relative is not paid to provide foster care for that child.
- The child is at risk of being placed into an ICF/IID facility because of the intensity of the child's care and the lack of needed support, or the child currently resides in an ICF/IID facility but, with appropriate community support, could return home.
- The child must meet, or be below, Medicaid income and asset limits when viewed as a family of one (the parent's income is waived).
- The child's intellectual or functional limitations indicate that he would be eligible for health, habilitative and active treatment services provided at the ICF/IID level of care. Habilitative services are designed to assist individuals in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings. Active treatment includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment is directed toward the acquisition of the behaviors necessary for the beneficiary to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status.

Medicaid Provider Manual (MPM),  
Behavioral Health and Intellectual and  
Developmental Disability Supports and Services Chapter,  
July 1, 2016, pp. 91-92  
(Underline added by ALJ)

In this case, the CMH asserts that the proposed termination was proper because Petitioner was no longer eligible for the CWP when he had been residing outside the parent/guardian's home for over 30 days because he had been residing in an institution, there would be no CWP service provided in the community for over 30 days, and Petitioner continued to reside in an institution without a discharge date in the next 30 days.

On April 20, 2016, Petitioner was placed at [REDACTED]. (Exhibit B, p. 2; Testimony of FHO) Subsequently, on May 26, 2016, Petitioner was placed at [REDACTED] (Testimony of FHO) A CWP service, family training, was last provided for Petitioner's case to Petitioner's mother on June 22, 2016. (Exhibit B, p. 12; Testimony of FHO and PAYFS) Accordingly, on July 14, 2016, a Notice and

Hearing Rights was issued to Petitioner stating services would be terminated effective July 31, 2016, because Petitioner had been residing in an institution for over 30 days without a CWP service provided in the community and continues to be in an institution without a discharge date in the next 30 days. (Exhibit A, pp. 1-2) Petitioner's mother reported that she did not receive the July 14, 2016, Notice and Hearing Rights. (Testimony of FHO) Therefore, on July 26, 2016, a Notice and Hearing Rights was issued to Petitioner stating services would be terminated effective August 7, 2016, because Petitioner had been residing in an institution for over 30 days without a CWP service provided in the community and continues to be in an institution without a discharge date in the next 30 days. (Exhibit A, pp. 3-4) The CMH documents show multiple emails with the Department of Health and Human Services (DHHS) between May 25, 2016, and July 26, 2016, regarding Petitioner's eligibility for the CWP. (Exhibit B, pp. 5-10)

Petitioner's mother did not contest that Petitioner had been residing in an institution for more than 30 days, that the last CWP service, family training, was provided on June 22, 2016, or that at the time of the July 2016, notices, there was no planned discharge date for Petitioner. Rather, Petitioner's mother raised issues regarding the MPM policy and concerns regarding how termination from the CWP may affect Petitioner's Medicaid eligibility. Understandably, Petitioner's mother is concerned about how it could affect Petitioner if his current inpatient treatment is interrupted if he were to lose Medicaid eligibility because his parents income is no longer waived based on the CWP, and if there is no longer any coverage for his in-patient services. (Hearing Request; Testimony of Mother) However, the jurisdiction for this appeal is limited to reviewing whether Petitioner continued to meet the criteria to be eligible for the CWP.

The criteria found within sections 14.1 Key Provisions and 14.2 Eligibility both include the requirement that the child is residing with his birth or legally adoptive parent(s) or with a relative who has been named the legal guardian. Further, the 14.1 Key Provisions section also adds the requirement that a CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

Petitioner's mother questioned when the portion of the policy addressing the circumstances in the second half of the fourth bullet point under 14.2 Eligibility (when the child currently resides in an ICF/IID facility but, with appropriate community support could return home) would apply. (Testimony of Mother) Considering the emails with DHHS regarding Petitioner's eligibility for the CWP and the testimony of the CMH witnesses, this portion of the CWP eligibility policy could apply if there was a planned discharge date within 30 days. (Exhibit B, pp. 5-10; Testimony of FHO and PAYFS) In other words, if there was a plan for the child to be discharged from the institution within 30 days back to the home of the parent/Guardian and the child received or would be expected to receive at least one CWP service per month, then the child would continue to meet the CWP criteria requiring the child to reside with the parent/Guardian and to receive at least one CWP service per month.

Overall, the MPM policy is specific that a CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility. A CWP service, family training, was last provided for Petitioner's case to Petitioner's mother on June 22, 2016. (Exhibit B, p. 12; Testimony of FHO and PAYFS) At the time the July 2016, Notices and Hearing Rights were issued, there was no planned discharge date for Petitioner. Rather, it was reasonably anticipated that Petitioner would remain in the institution for several months. (Exhibit B, pp. 5-10) Therefore, it was reasonably anticipated that Petitioner would not receive at least one CWP service per month. Accordingly, the proposed termination of Petitioner's services through the CWP must be upheld based on the information available to the CMH at that time.

As discussed, if Petitioner's circumstances have changed, such as if there is now a planned discharge date, the CMH indicated they would further communicate with DHHS to review Petitioner's eligibility for the CWP.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly proposed a termination of Petitioner's services through the CWP based on the information available at the time of the July 2016 Notices and Hearing Rights.

**IT IS THEREFORE ORDERED** that

The CMH's decision is AFFIRMED.

CL/cg



---

**Colleen Lack**

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



**DHHS -Dept Contact**

[REDACTED]

**DHHS Department Rep.**

[REDACTED]

**Petitioner**

[REDACTED]