



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 9, 2017  
MAHS Docket No.: 16-015612  
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 January 5, 2017. Petitioner's mother and Legal Guardian [REDACTED] and friend, [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Quality Improvement and Fair Hearings Officer; [REDACTED], County Director and [REDACTED], Case Manager represented [REDACTED], the Community Mental Health (CMH) organization.

Respondent's Exhibits 1-12 were admitted as evidence.

### **ISSUE**

Did the CMH properly propose to terminate services for Petitioner because he attends college in another county?

### **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.
2. Petitioner was receiving CMH Services from [REDACTED].
3. Petitioner's permanent address is located in [REDACTED] County.
4. On October 7, 2016, Petitioner's mother became his plenary Guardian.

5. On October 6, 2016, the [REDACTED] County office ([REDACTED]) sent Petitioner an Advance Negative Action Notice stating that he was denied Self Determination. (Attachment #2)
6. Petitioner started college in the fall of 2016 and resides in the dormitory in [REDACTED] County.
7. Petitioner wants to continue to use resources from [REDACTED] County, [REDACTED] CMH.
8. On October 26, 2016, the Michigan Administrative Hearing System received a Request for Hearing to contest the denial of Self-Determination from [REDACTED] County.

### **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 Principles of self-determination recognize the rights of people supported by the mental health system to have a life with freedom, and to access and direct needed supports that assist in the pursuit of their life, with responsible citizenship. These supports function best when they build upon natural community experiences and opportunities. The person determines and manages needed supports in close association with chosen friends, family, neighbors, and co-workers as a part of an ordinary community life. (Self Determination Policy and Practice Guideline, October 1, 2013)

In Michigan, all Medicaid beneficiaries whose services are through the public mental health system have a right under the Balanced Budget Act (BBA) to choose the providers of the services and supports that are identified in their individual plan of service "to the extent possible and appropriate." (Self Determination Policy and Practice Guideline, October 1, 2013, page 2)

The general rule for establishing a county of financial responsibility (COFP) is contained in the Technical Requirements for CMHSPs. The general rule states:

For persons served under the terms of this contract, the financially responsible CMHSP is the one that served them in the county where they last lived independently.

**C. Adults.** For children the COFR will be the county where the child and parents have their primary residence, unless the child (including individuals through age 19) is a temporary or permanent ward of the court. (Page 1) consumers have the right to choose where they live, unless restricted by a court order. The choice shall be considered the consumer's/guardian's choice when it is not instigated or facilitated by a service manager or provider. Assistance by services managers or providers in a County to notify another County of the consumer's decision to move shall not be determined to be the facilitation of the choice. When a consumer, who is living independently, chooses to relocate from County A to County B into a dependent living situation, the COFR shall remain the county in which he/she last lived independently. (Page 2)

When a consumer relocates to a dependent setting in County B from an independent setting in County A, County A shall remain the COFR, under any of the following circumstances:

- There is an existing agreement between County A and County B; or
- County A has continued to provide and pay for Mental Health Services; or
- The consumer requests services from County B within 120 days of relocation (Page 3)

**D. Persons Living in Unlicensed Settings.** Unlicensed settings are generally considered to be independent living. The COFR is the CMHSP servicing the county where the residence is located. If the consumer's Level of Care and intensity of Service required is equivalent to dependent living setting, the consumer shall be considered to be independent care for the purposes of COFR. Equivalency to dependent care shall be established when the individual's Person Centered Plan provides for provision of eight or more hours of specialized services and/or supports in the residence each day. (Page 3)

The Person Centered Plan, dated August 22, 2016 indicates that Petitioner needs assistance with organizing his Activities of Daily Living and continued psychiatric services. Petitioner's mother is his plenary guardian. A **Plenary guardianship** is defined as a **guardianship** in which the court gives the **guardian** the power to exercise all legal rights and duties on behalf of a ward, after the court makes a finding of incapacity.

In the instant case, the CMH feels that Petitioner is now residing at his college in ██████ County. The CMH wants ██████ County to service Petitioner because then ██████ County would be the CMH of financial responsibility. ██████ County CMH is only three miles from Petitioner's college. Medicaid rules state that beneficiaries must receive services from providers from the community in which they live independently.

Petitioner's Representative asserts that Petitioner already has established mental health providers located in ██████████ County. Petitioner becomes suicidal in winter months. Petitioner is not totally independent and he has problems with transitions from caregiver to caregiver. Petitioner's mother is willing and available to continue to provide transportation to Petitioner so that he can see his current providers in ██████████ County. In addition, Petitioner's permanent address is located in ██████████ County. He merely attends school in ██████████ County, which should be considered a temporary address, as he returns home on breaks and for the summer when school is out.

This Administrative Law Judge finds that Petitioner is clearly not independent, even though he is able to stay in the dormitory at school. He has a plenary guardian, which clearly means that he is incapable of taking care of himself. He cannot establish a residency of his own volition, without the approval and assistance of his guardian. Thus, his permanent residence remains in ██████████ County and he is able to retain Self-Determination services in that county.

██████████ CMH has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Medicaid policy when it denied Petitioner's Self-Determination services in ██████████ County. Since Petitioner has a guardian, his is not independent when at school. The CMH's decision must be overturned.

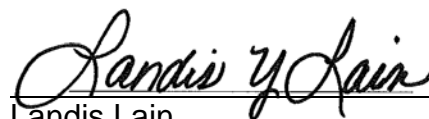
### DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that ██████████ CMH decision to deny Self-Determination services to Petitioner was improper under the circumstances.

**IT IS THEREFORE ORDERED** that

The Department's decision is **REVERSED**. ██████████ CMH is **ORDERED** to continue to provide services to Petitioner if he remains otherwise eligible for such services.

LL/sb



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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]

**Authorized Hearing Rep.**

[REDACTED]