



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 4, 2017
MAHS Docket No.: 16-015904
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

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

After due notice, a hearing commenced on January 3, 2017. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED], step-father; [REDACTED], Case Manager, [REDACTED]; and [REDACTED], Clinical Program Manager, [REDACTED], appeared as witnesses for Petitioner.

[REDACTED], Fair Hearing Officer, appeared on behalf of Respondent, [REDACTED] Community Mental Health (CMH or [REDACTED]). [REDACTED], Utilization Review Manager, appeared as a witness for [REDACTED].

ISSUE

Did the CMH take any action giving rise to a Medicaid fair hearing?

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 12 year old Medicaid beneficiary, born [REDACTED], who carries a primary diagnosis of Autism Spectrum Disorder and Conduct Disorder, childhood onset secondary. (Exhibit A, pp 1, 3; Testimony).
2. [REDACTED] is under contract with the Michigan Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area. (Exhibit A; Testimony)

3. Petitioner lives at home with her mother, step-father, and 4-year old half-brother. (Exhibit A, p 1; Testimony).
4. Petitioner has been approved to receive Applied Behavioral Analysis (ABA) Services, Psychiatric Services, Case Management, Family Training, and Respite Services. (Exhibit A, p 1; Testimony)
5. On September 6, 2016, [REDACTED] authorized ABA Services to be provided through [REDACTED]. (Exhibit A, p 3; Testimony)
6. On October 1, 2016, [REDACTED] sent Petitioner's mother a notice indicating that, after an assessment, it was determined that they would not be able to provide the level of services Petitioner required. [REDACTED] [REDACTED] mistakenly provided this notice in the form of an Adequate Action Notice, which informed Petitioner of appeal rights for a Medicaid Fair Hearing. (Exhibit A, pp 4-5; Testimony)
7. On October 21, 2016, Petitioner's mother completed the request for hearing form included with the notice from [REDACTED] and forwarded it to the Michigan Administrative Hearing System. Petitioner's mother also filed a request for a local appeal on the same date. (Exhibit A, pp 6, 9, Exhibit 1; Testimony)
8. When [REDACTED] informed Petitioner and [REDACTED] that they were unable to provide ABA Services to Petitioner, [REDACTED] switched the authorization for services to [REDACTED] [REDACTED] ([REDACTED]). Unfortunately, [REDACTED] currently has a waiting list for ABA Services and Petitioner was placed on that waiting list. (Exhibit A, pp 7-8; Testimony)

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 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...

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 (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services 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 Code of Federal Regulations (CFR) affords a Medicaid beneficiary a right to a fair hearing when the Department takes an action that is a denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. *42 CFR 438.400*. Here, [REDACTED] has taken no action that is a denial, reduction, suspension, or

termination of a requested or previously authorized Medicaid covered service. Petitioner was approved for ABA services and remains approved for ABA services. Unfortunately, the only available provider for those services currently has a waiting list and Petitioner has been placed on that waiting list. [REDACTED] has also met with Petitioner and her family and offered other services to assist while Petitioner waits for ABA services. [REDACTED] has also investigated the possibility of a referral to another provider.

Petitioner bears the burden of proving by a preponderance of the evidence that [REDACTED] denied, reduced, suspended or terminated his services. Based on the foregoing analysis, Petitioner has failed to meet that burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Lifeways did not take an action giving rise to a Medicaid fair hearing.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



RM/cg

Robert J. Meade

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]