



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 17, 2017  
MAHS Docket No.: 16-016549  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

**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 11, 2017. Petitioner, a minor, was represented by [REDACTED] who also testified on his behalf. [REDACTED], parent, [REDACTED], home-based worker with the [REDACTED], and [REDACTED], testified on behalf of Petitioner.

[REDACTED] represented the [REDACTED] of [REDACTED].

**ISSUE**

Did the Department properly deny Petitioner's request for residential placement?

**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 [REDACTED] male Medicaid beneficiary, born [REDACTED] [REDACTED] (Exhibit A; Testimony).
2. Petitioner is an eligible Medicaid beneficiary of multiple services with the [REDACTED] including but not limited to wrap around, home based, parent support partners, respite and CLS. (Exhibit A.1).
3. Petitioner's diagnoses includes autism spectrum disorder, ADHD, hyperactive impulsive; disruptive mood dysregulation disorder; parent-child relational problem. Petitioner has had residential facility placement on at least 3 occasions. Petitioner's most recent hospitalization

was at [REDACTED] in the inpatient psychiatric department from [REDACTED] to [REDACTED] after displaying increasingly aggressive behaviors at home. (Exhibit A.12).

4. Evidence indicates that Petitioner' behavior includes aggressive physical outbursts, throwing bowling water about the house; physical altercations with siblings; smearing feces on the walls; kicks holes in walls. (Exhibit A).
5. On November 15, 2016 Petitioner filed a hearing request to dispute being denied residential placement. (Exhibit A).
6. In its evidentiary packet, the Respondent included an October 20, 2016 [REDACTED] Authorization Form" indicated stating: "Residential at [REDACTED] is not approved due to not currently utilizing all less restrictive services..." (Exhibit A.10). The Respondent also included a [REDACTED] issued Notice of Action informing Petitioner that he was denied "Community Living Supports and Personal Care by [REDACTED]" on the grounds that the amount, scope or duration of services are not appropriate and, that the most cost effective option is the least restrictive environment. (Exhibit A.17).
7. The Respondent testified at the administrative hearing that no authority or cite was given in either decision notice on the grounds that there is nothing in the Medicaid Provider Manual that would entitle Petitioner to any residential services under any conditions; and that such is simply not a benefit that Medicaid would cover. (Testimony).
8. The Respondent testified at the administrative hearing that there is categorically no coverage under the Michigan Medicaid program for any residential services for a minor. (Testimony).
9. The individual who presented the Respondent's case did not have personal knowledge of the case.
10. The Respondent testified at the administrative hearing that regardless as to whether current services were over or under-utilized is not relevant as in either case, residential services is not a covered benefit under any condition(s). (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 (MDCH) 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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

The applicable section of the MPM to the facts here is the Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter. Specifically, that chapter states under 2.3. "Medicaid does cover services provided to children with developmental disability in a CCCI that exclusively serves children with developmental disability, and has an enforced policy of prohibiting staff use of seclusion and restraint..." Version Date: January 1, 2017, page 10.

Here, the Respondent first presented evidence. While the documentary evidence includes statements regarding use of current services, testimony by the Respondent was essentially that it was irrelevant to the extent that the Medicaid program and the MPM simply does not offer any residential services to a minor. Moreover, the Respondent testified that the reason that there was no Medicaid cite in the action notices, and no authority to include in the evidentiary packet (Exhibit A) is due to the fact that there is no coverage at all, and thus, nothing to reference.

After a careful review of the entire evidence, and putting substantial weight on the Respondent's testimony, this ALJ finds that the Respondent misled this forum, and misled the course and proceedings here such that it significantly impacted Petitioner's due process rights in having a full review of all the evidence. Specifically, the Respondent specifically stated that none of the evidence regarding program use, and/or medical findings should be given any weight in any case, as no eligibility existed. However, based on the language found in the Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, Section 2.3, clearly the Medicaid program can and will provide residential placement.

Here, the testimony and decisions are not supported by the credible and substantial evidence of record. Moreover, the Respondent's testimony which reflects the actions by the Respondent in its denial impacted Petitioner's right to have his request fully considered under the applicable policy. Clearly if the Respondent was not aware of the policy, the Respondent could not do a full assessment of eligibility for a residential placement.

After a careful review of the credible and substantial evidence, this ALJ finds that the Respondent's denial based on its position that there is categorically no eligibility for residential placement was not correct, is not support by federal and state law, and must be reversed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Respondent's denial and testimony that there is categorically no eligibility for any residential treatment for a minor with Medicaid in the State of Michigan was not correct, and cannot be upheld.

**IT IS THEREFORE ORDERED** that:

The Respondent's decision is **REVERSED**.

The Respondent is ordered to do a new assessment, and apply the applicable policy, and issue a new written decision that includes the proper authority in making its determination. Petitioner shall retain a right for an administrative hearing for 90 days from the date of the new notice.

**IT IS SO ORDERED.**

JS/cg



---

**Janice Spodarek**

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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]