



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR



Date Mailed: February 27, 2017  
MAHS Docket No.: 17-000120  
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 February 23, 2016. Petitioner was represented by [REDACTED], Guardian. [REDACTED], Social Worker with [REDACTED] appeared as a witness.

The Respondent in this matter is the Department of Health and Human Services subcontractor, [REDACTED] County Community Mental Health Authority. The Respondent, Department or CMH was represented by [REDACTED], Clinical Director. Witnesses included [REDACTED] OBRA Coordinator, [REDACTED], RN, and [REDACTED], Case Coordinator.

**ISSUE**

Did the Respondent refuse to assist Petitioner in search 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 resides in an extended care facility, and awaits residential placement.
2. Petitioner has been receiving services from the CMH since [REDACTED].
3. Petitioner has been diagnosed with multiple medical impairments, including stroke, kidney failure, cerebral palsy, vascular dementia with behavioral

- disturbance, dysphagia, ataxia, chronic kidney disease, rhabdomyolysis, seizure disorder, difficulty communicating, and severe intellectual disability.
4. An initial OBRA Level II was completed on [REDACTED] recommending no nursing home/specialized mental health services. The Respondent received a copy of the assessment on [REDACTED].
  5. The Respondent has had contacts and application placements with [REDACTED] (in [REDACTED] and in [REDACTED] again), [REDACTED] and [REDACTED]. None were able to meet Petitioner's level of need due to the level of specialized need. The Respondent is still actively searching.
  6. The Respondent indicates that Petitioner's special needs are contributing to the difficulty in trying to find placement but the Respondent is still actively searching.
  7. On [REDACTED] Petitioner's Guardian requested a hearing arguing that Petitioner wants residential care and that the CMH has not cooperated.

### **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).

Here, the facts are essentially not disputed—the CMH has the responsibility to assist in residential placement under OBRA. Petitioner argues that CMH is not carrying out its statutory duty; Respondent CMH argues that it is doing everything it possibly can, has done so, and continues to search for adequate placement but that Petitioner's special needs are contributing to the difficulty of the placement.

Petitioner bears the burden of proving by a preponderance of the evidence that the CMH has not cooperated in searching for residential placement in accordance with the Code of Federal Regulations (CFR) and Medicaid policy. Petitioner did not meet the burden to establish that the CMH is not fulfilling its statutory duty to assist in residential placement. Petitioner offered no law, policy, regulation or facts that would meet its burden to indicate that the CMH has failed to do so. The CMH on the other hand submitted much evidence to support that it has and continues to search for an appropriate residential placement on behalf of Petitioner.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Petitioner did not meet his burden to show that the Respondent CMH has failed to actively search for residential placement on behalf of Petitioner.

**IT IS THEREFORE ORDERED** that

The Respondent's CMH's action are hereby UPHELD.

JS/cg



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**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

**Authorized Hearing Rep.**

[REDACTED]

**DHHS Department Rep.**

[REDACTED]

**Petitioner**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]