



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: March 22, 2017  
MAHS Docket No.: 16-018677  
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, an in-person hearing was held on March 16, 2017 at the Respondent [REDACTED], in [REDACTED] Petitioner's parent, and guardian, [REDACTED], appeared on behalf of Petitioner and testified. Petitioner appeared but did not testify. Petitioner's father, [REDACTED], appeared by conference telephone but did not testify.

[REDACTED] appeared on behalf the Respondent CMH. [REDACTED] appeared as a witness.

**ISSUE**

Did the CMH properly set up and comply with Petitioner's Individualized Plan of Service (IPOS) on October 25, 2016?

**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] Medicaid beneficiary, born [REDACTED]. Petitioner is also on a parent health insurance plan. (Exhibit A; Testimony).
2. [REDACTED] (Respondent or CMH) is under contract with the Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area. (Testimony)

3. Petitioner is diagnosed with [REDACTED]. Petitioner is 5' 11", weighs 275 pounds, who cannot be left alone. Petitioner lives with his parents, who both work. Petitioner currently attends school. Petitioner's family feeds him, and states that he very much likes cake, pop, and raw dough. (Exhibit A; Testimony).
4. Petitioner needs much assistance with or prompts with ADLs and IADLs. Petitioner's behavior is inappropriate—is aggressive, verbally assaults others, yells, scream, physically assaults, pulls hair, and injures others. Petitioner's parent submitted numerous photos of bruises and injuries from being attacked. (Exhibit A).
5. Petitioner's parent and guardian is extremely loving and patient with Petitioner.
6. On October 28, 2016 the CMH set up an IPOS for Petitioner, which authorized a myriad of Medicaid Covered Specialty supports and Services. These included Targeted Case Management, Mental Health Assessment, Treatment Planning, Community Living Supports (CLS), Family Training, Treatment Monitoring, Speech/Hearing/Language, and Respite. (Exhibit A.).
7. Attached to the IPOS was an Annual Estimated Cost of Service totaling [REDACTED]. (Exhibit A.14).
8. Petitioner approved the IPOS. (Testimony).
9. Unrefuted evidence is that [REDACTED] County, as the State of Michigan, has had a lack of available individuals to provide CLS supports, but has taken no negative or adverse action on Petitioner's IPOS action. (Exhibit A.1).
10. The Respondent is attempting to support Petitioner to move out of his home with his parents and into the least restrictive environment in his own community. Petitioner is difficult to place due to his combative nature; to date, an acceptable placement has not been found. CMH continues to search.
11. On December 9, 2016, Petitioner's guardian filed a hearing request with the Michigan Administrative Hearing System (MAHS), containing a myriad of reasons for requesting a hearing, including failure of the CMH to place Petitioner in a residential placement, lack of CLS staff, respite reduction due to Petitioner ageing out, occupational therapy removed. (Exhibit I.25).

### **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). 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, the Respondent CMH indicates that [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 a myriad of Medicaid Covered Specialty Supports and Services at Petitioner's annual review in [REDACTED], and to date, the Respondent has not taken an adverse action related to these supports and services. (Exhibit A.1). Unfortunately, there is a shortage of staff providing some of these services in [REDACTED] County, which is reflective of the State of Michigan staffing problems. The Respondent CMH in no way denied or refuses to offer these services.

Petitioner bears the burden of proving by a preponderance of the evidence that the CMH denied, reduced, suspended or terminated his services. Based on the foregoing analysis, Petitioner has failed to meet that burden. Petitioner offered no evidence of a negative action as to the CLS, target case management, treatment planning, CLS, family training, treatment monitoring, speech/hearing/language. Nor has Petitioner's guardian offered any law or policy that would indicate that the CMH has erred in carrying out its mandates and contract objectives with the State of Michigan. Again, Petitioner has not met her burden of proof.

As to placement into a residential facility, Medicaid payments are not available to the Petitioner for such. Again, Petitioner has the burden of proof and did not submit any policy or procedure that would require the CMH to pay Medicaid monies for any such payment. At the same time, the CMH has acknowledged that it is and has been attempting to assist Petitioner with placement into a community setting in a least restrictive environment. To date, neither the CMH nor the Petitioner's guardian has identified a placement for Petitioner.

As to the occupational therapy concerns, Petitioner argues that she does not understand why it was removed, and that the Petitioner is in great need of OT. The Respondent indicated that Petitioner has private pay insurance for this benefit, and/or to date has not brought forth evidence to show that he does not have OT available under his private medical insurance. Apparently, despite Petitioner's guardian's concerns, no

request to date has been made of the private insurance for OT. Medicaid is a payer of last resort. The federal and state governments prohibit the use of welfare monies when those benefits available to the beneficiary.

As to Petitioner's frustrations and concerns, these are without a doubt real—and admitted to by the Respondent as a given. Moreover, without question, Petitioner's guardian is one of the most loving and patient parents. However, being loving and patient will not entitle Petitioner to any more benefits than that which the CMH is authorized to provide, and/or is capable of proving. Petitioner has simply not offered evidence of any negative action, or, actions on the part of the CMH that would give rise to any remedy at the administrative hearing level.

Last, Petitioner approved the plan in October, 2016. It is unclear why Petitioner now finds certain aspects of the plan to be absent.

For these reasons, and for the reason stated above, Petitioner has failed to meet his burden of establishing that the Respondent CMH erred.

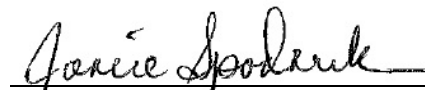
### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH did not err in setting up the [REDACTED] IPOS, and, that Petitioner did not establish otherwise an action giving rise to a Medicaid fair hearing.

**IT IS THEREFORE ORDERED** that

The CMH decision is AFFIRMED.

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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DHHS-Location Contact**

[REDACTED]