STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF

[redacted]
Appellant

_____/

Docket No. 2009-20598 CMH
Case No. [redacted]

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. [redacted], appeared on behalf of the Appellant. The Appellant appeared and testified. [redacted], Hearings Coordinator, represented the Department. Her witness was [redacted] utilization manager.

ISSUE

Did the Department properly propose termination of Assertive Community Treatment (ACT) services for the Appellant?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At the time of hearing the Appellant is a [redacted] Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant is afflicted with: Bipolar II disorder. (Department's Exhibit A, summary)

3. On [redacted], the Appellant was denied her requested placement in Assertive Community Treatment (ACT).

4. The Appellant was referred to IMPACT (an ACT service) by her psychiatrist, [redacted]) on [redacted], as the physican was concerned that the Appellant was not taking her prescribed medications. (Department's Exhibit A, sub (f))

5. The Department, on utilization review, denied ACT owing to lack of support for intensity of service. Case management services were recommended in place of ACT services. The denial notice was sent to the Appellant's psychiatrist as well. (Department's Exhibit A, sub (b) and sub (e) page 8)

6. Next, the Appellant's psychiatrist saw the Appellant on [redacted] and recorded significant improvement:

> She has been doing well . . . Compliance was always an issue with Vicky and it looks like giving her medications in dose has been working well . . . She presents for today's appointment with good hygiene and grooming and overall appears to do quite well and the best I saw (sic) her for a long time . . . The patient denies feeling depressed. No mood changes. Reports sleeping at least 9 – 10 hours at night, appetite is stable . . . patient presents with good hygiene and grooming, nicely done hair, wearing some makeup, nicely dressed, appropriately to the weather . . . No suicidality/homicidality present . . Affect brighter and mood congruent . . . No overt psychotic symptoms present . . . No evidence of mania/hypomania . . . overall appears to look much better . . . patient is ware (sic) of crisis intervention center availability in case of emergency. [Department's Exhibit A, summary and sub (g)]

7. The Appellant's filed the instant request for hearing, received by SOAHR on [redacted]. (Appellant's Exhibit #1)

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 Community Health (Department) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) HSW. LifeWays Jackson County Community Mental Health/JCCMH contracts with the Michigan Department of Community Health to provide mental health services under the 1915(b) waiver.

Medicaid Beneficiaries are entitled to services through LifeWays if the following conditions are met:

1. They meet the service eligibility requirements per the MDCH/CMHSP Managed Specialty Supports and Services Contract: Attachment 3.3.2.

2. The service in issue is a Medicaid covered service, i.e. State Medicaid plan or waiver program service and

3. The service is medically necessary.[1]

Medicaid beneficiaries are only entitled to medically necessary, Medicaid covered services. 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. LifeWays JCCMH is required to use a person-centered planning process to identify medically necessary services and how those needs are to be met.

The person-centered planning process is designed to provide beneficiaries with a "person centered" assessment and planning in order to provide a broad, flexible set of supports and services. Medically necessary services are generally those identified in the Appellant's person-centered plan. The SOAHR has jurisdiction to hear matters related to a denial, reduction, termination, or suspension of a Medicaid covered service. *See* 42 CFR 431.200 et seq.

[redacted] provided an Adequate Action Notice to the Appellant that [redacted] had determined that the Appellant was not eligible for Medicaid funded services, in this case the ACT program. Department's Exhibit A (sub b)

[redacted] denied authorization for continued ACT services after determining the Appellant was no longer eligible for those services because her symptoms and functioning had improved and she no longer met the medical necessity standards for ACT services. A "reasonable" try out period for case management was recommended as well. *See* Department's Exhibit A, sub (a)

The Medicaid Provider Manual (MPM) sets forth the overall goals and eligibility for the highly intensive and restrictive ACT program:

SECTION 4 – ASSERTIVE COMMUNITY TREATMENT PROGRAM

Assertive Community Treatment (ACT) is a set of intensive clinical, medical and psychosocial services provided by a mobile multi-disciplinary treatment team. Michigan adopted a modified ACT model in the 1980's tailored to Michigan service needs. While a PIHP is free to use either the Michigan ACT model or the federal Substance Abuse and Mental Health Services Administration (SAMHSA) ACT model, with prior Department approval, the use of the Michigan model is strongly encouraged. ACT provides basic services and supports essential to maintaining the beneficiary's ability to function in community settings, including assistance with accessing basic needs through available community resources, such as food, housing, and medical care and supports to allow beneficiaries to function in social, educational, and vocational settings. ACT services are based

[1] *See* Medicaid Provider Manual at §2.5 – 2.5.D, Mental Health [ ], July 1, 2009, pp. 12-14

on the principles of recovery and Person-centered practice and are individually tailored to meet the needs of the beneficiary.

Services are provided in the beneficiary's residence or other community locations by all members of the ACT team. All ACT team staff must have a basic knowledge of ACT programs and principles acquired through MDCH approved ACT specific training within six months of hire, and then at least one MDCH approved ACT specific training annually. . . .

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ELIGIBILITY CRITERIA

Utilization of ACT services in high acuity conditions/situations allows beneficiaries to remain in their community residence and may prevent the use of more restrictive alternatives which may be detrimental to a beneficiary's existing natural supports and occupational roles. This level of care is appropriate for beneficiaries with a history of serious mental illness who may be at risk for inpatient hospitalization, intensive crisis residential or partial hospitalization services, but can remain safely in their communities with the considerable support and intensive interventions of ACT. In addition to meeting the following criteria, these beneficiaries may also be likely to require or benefit from continuing psychiatric rehabilitation.

The ACT program is an individually tailored combination of services and supports that may vary in intensity over time based on the beneficiary's needs and condition. Services include availability of multiple daily contacts and 24-hour, seven-days-per-week crisis availability provided by a multidisciplinary team which includes psychiatric and skilled medical staff. . .

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Diagnosis The beneficiary must have a mental illness, as reflected in a primary, validated, current version of DSM or ICD diagnosis (not including V Codes).

- **Severity of Illness** Prominent disturbance of thought processes, perception, affect, memory, consciousness, somatic functioning (due to a mental illness) which may manifest as intermittent hallucinations, transient delusions, panic reactions, agitation, obsessions/ruminations, severe phobias, depression, etc., and is serious enough to cause disordered or aberrant conduct, impulse control problems, questionable judgment, psychomotor acceleration or retardation, withdrawal or avoidance, compulsions/rituals, impaired reality testing and/or

> impairments in functioning and role performance. MPM, Mental Health [ ] §§4 through 4.5, pp. 23 – 26.[2] (Emphasis supplied)
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> ***

The Appellant, through her representative, was critical of the skill level of case management staff. Both the Appellant and her representative articulated the need for socialization with higher functioning adults in addition to the increased frequency of hands on interaction that the ACT program would provide. The Appellant stated that she did not believe her condition was improved.

The Department witnesses testified that on utilization review the Appellant's progress indicated that she was functioning at the case management level of support as the Appellant demonstrated greater independence versus passivity.

[redacted] acknowledged that the pursuit of independence was not a necessarily "a straight line" exercise and that sufficient safeguards were in place to assist the Appellant in transitioning to less restrictive case management.

The Department witness testified and produced credible medical evidence that the Appellant no longer met the eligibility criteria as one afflicted with a serious mental illness that required the intensive services and supports afforded via the ACT program. *See* Testimony of Treciak and Department's Exhibit A –throughout.

With documentation of stability apparent in the record as reflected in person centered planning the Appellant no longer meets medical necessity criteria for ACT services. The Department provided sufficient evidence that the Appellant was no longer eligible for ACT. Furthermore, based on the testimony the Appellant has demonstrated self administered medication stability, the receipt of appropriate benefits, absence of depression and a lack of recent hospitalization.

The Appellant did not preponderate as one with a serious mental illness requiring the continuation of intensive, individualized services and supports of the ACT program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant no longer met the requirements for ACT services. The Department properly denied her ACT services.

[2] With the exception of a credentialing enhancement for advanced addiction counselor at section 4.3 (not cited above) this edition of the MPM is substantially similar to the version in place at the time of the Appellant's request for hearing.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 7/21/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.