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. 2009-22137 CMH
Case No. [redacted]
Load No [redacted]

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. [redacted] (CMH), represented the Department's agent (CMH). [redacted], appeared as a witness on behalf of the Department. [redacted], also appeared as a witness on behalf of the Department. [redacted] appeared as a witness on behalf of the Department.

[redacted] appeared on behalf of the Appellant. [redacted], appeared as a witness on behalf of the Appellant. The Appellant was present but did not testify at hearing. At the request of the Appellant, another support person was present named [redacted].

ISSUE I

Is the Appellant entitled to a Fair Hearing?

ISSUE II

Did the CMH properly suspend the Appellant's [redacted] services for one week?

FINDINGS OF FACT

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

1. The Appellant is a [redacted] Medicaid beneficiary.

2. The Appellant is a person who is moderately mentally retarded.

3. [redacted] (hereinafter CMH) contracts with the Department to provide mental health and developmental disability services.

4. The Appellant has been receiving CMH services, despite not having a signed Individualized Plan of Service.

5. The CMH has prepared an IPOS and presented to both the Appellant and his mother, who requested to be included in decision making for her adult son. (uncontested testimony at hearing)

6. The Appellant's mother is his Power of Attorney. (uncontested)

7. The Appellant's mother has instructed the Appellant not to sign any papers. The Appellant's mother has been provided a copy of the proposed IPOS for [redacted]. (testimony of CMH witness at hearing).

8. The Appellant's mother has not signed the IPOS on behalf of the Appellant. (uncontested)

9. The Appellant has been allowed to participate in [redacted] activities for at least 3 years.

10. The Appellant is authorized to participate in [redacted] activities by the CMH authority.

11. The Appellant has attended [redacted] on nearly a daily basis until he was suspended for one week beginning on or about [redacted]. (uncontested)

12. The Appellant was given a face to face warning and a progress note prepared and placed in his [redacted] records on [redacted], following an incident he was involved in at the [redacted]. The warning was that if he failed to follow a [redacted] rule again, he would receive a suspension. (Department Exhibit A and testimony of Department witness)

13. On [redacted], a [redacted] staff member asked the Appellant to stop following another [redacted] participant around. The Appellant did not stop following the other participant around. (Department witness)

14. The Appellant was asked a second and third time, within 60 minutes, by the same staff member to stop following the other participant around. The Appellant failed to stop following the other member around. (uncontested testimony of Department witness)

15. The Appellant failed to follow [redacted] Rule 10. (testimony from Department

witnesses)

16. The Appellant was suspended for 1 week.

17. The Appellant's mother objected to the suspension. She requested a hearing on the Appellant's behalf on or about [redacted].

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…

At the outset of the hearing, the CMH Attorney moved to dismiss the case. The CMH fair hearing officer asserted that because the Appellant did not have a signed IPOS, he was a guest of the [redacted] not receiving Medicaid funded services. She argued that because he was not receiving Medicaid funded services he had no right to a hearing regarding the suspension of the services.

The suspension of Appellant's [redacted] participation constitutes an "action" and gives rise to the Appellant's right to a fair hearing. The federal regulations, in pertinent part:

> 42 CFR 438.400 Statutory basis and definitions.
>
> (a) Statutory basis. This subpart is based on sections 1902(a)(3), 1902(a)(4), and 1932(b)(4) of the Act.
>
> (1) Section 1902(a)(3) requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.
> (2) Section 1902(a)(4) requires that the State plan provide for methods of administration that the Secretary finds necessary for the proper and efficient operation of the plan.
> (3) Section 1932(b)(4) requires Medicaid managed care organizations to establish internal grievance procedures under which Medicaid enrollees, or providers acting on their behalf, may challenge the denial of coverage of, or payment for, medical assistance.
>
> (b) Definitions. As used in this subpart, the following terms have the indicated meanings:
>
> Action means--
> In the case of an MCO or PIHP--
>
> (1) The denial or limited authorization of a requested service, including the type or level of service;
> (2) The reduction, suspension, or termination of a previously authorized service;
> (3) The denial, in whole or in part, of payment for a service;
> (4) The failure to provide services in a timely manner, as defined by the State.

The suspension of Appellant's service also required the CMH to provide the Appellant with a Notice of Action. The federal regulations, in pertinent part:

> 42 CFR 438.404 Notice of action.
>
> (a) Language and format requirements. The notice must be in writing and must meet the language and format requirements of Sec. 438.10(c) and (d) to ensure ease of understanding.

(b) Content of notice. The notice must explain the following:

(1) The action the MCO or PIHP or its contractor has taken or intends to take.
(2) The reasons for the action.
(3) The enrollee's or the provider's right to file an MCO or PIHP appeal.
(4) If the State does not require the enrollee to exhaust the MCO or PIHP level appeal procedures, the enrollee's right to request a State fair hearing.
(5) The procedures for exercising the rights specified in this paragraph.
(6) The circumstances under which expedited resolution is available and how to request it.
(7) The enrollee's right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) Timing of notice. The MCO or PIHP must mail the notice within the following timeframes:

(1) For termination, suspension, or reduction of previously authorized Medicaid-covered services, within the timeframes specified in Secs. 431.211, 431.213, and 431.214 of this chapter.

This ALJ finds the logic of the CMH's position consistent, however, the Policy does not support a finding that a lack of signed IPOS means services received are somehow not authorized and not Medicaid funded services. There is no requirement in the Medicaid Provider Manual stating that an IPOS be signed by the participant in order for him/her to receive the services. The Appellant obviously had the authorization to participate at [redacted] or he would not have been allowed to enter and remain there. There would not be a file for him or a progress note. His right to participate was suspended in [redacted], ending [redacted]. The CMH did provide the notice required. He has a right to a fair hearing regarding suspension of the Medicaid funded service.

The Appellant was suspended from [redacted] participation for one week as a result of failing to adhere to [redacted] Rules administered by the Director of the [redacted]. [redacted] is a Medicaid funded service for CMH participants and described below:

SECTION 5 – CLUBHOUSE PSYCHOSOCIAL REHABILITATION PROGRAMS
A clubhouse program is a community-based psychosocial rehabilitation program in which the beneficiary (also called clubhouse "members"), with staff assistance, is engaged in operating all aspects of the clubhouse, including food service, clerical, reception, janitorial and other member supports and services such as employment, housing and education. In addition, members, with staff assistance, participate in the day-to-day decision-making and governance of the program and plan community projects and social activities to engage members in the community. Through the activities of the ordered day, clubhouse decision-making opportunities and social activities, individual members achieve or regain the confidence and skills necessary to lead vocationally productive and socially satisfying lives.

5.1 PROGRAM APPROVAL

PIHPs must seek approval for providers of psychosocial rehabilitation clubhouse services from MDCH.

(Refer to the Directory Appendix for contact information.) MDCH approval will be based on adherence to the requirements outlined below.

5.2 TARGET POPULATION

Clubhouse programs are appropriate for adults with a serious mental illness who wish to participate in a structured program with staff and peers and have identified psychosocial rehabilitative goals that can be achieved in a supportive and structured environment. The beneficiary must be able to participate in, and benefit from, the activities necessary to support the program and its members, **and must not have behavioral/safety or health issues that cannot adequately be addressed in a program with a low staff-to-member ratio.** (Emphasis supplied by ALJ)

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In this case it is undisputed that the Appellant was provided a verbal warning regarding failure to follow [redacted] rules on [redacted]. A progress note placed in his file reflects the warning provided. The progress note is part of the evidentiary record as the Department's exhibit and was not contested at hearing. Exactly what occurred during the incident that gave rise to the progress note and warning was contested, but that is not material to the disposition of this case. The fact remains, whatever occurred at [redacted] on or about [redacted], the Appellant was warned he was required to follow all the [redacted] rules and would receive a suspension if he failed to do so in the future. Thereafter, on [redacted], the Appellant was cited and suspended for harassing another [redacted] participant. He was asked to stop following the other member 3 times within a 60 minute time span. He failed to adhere to the staff request that he stop following the other person. This was deemed harassment of the other participant. Rule 10 prohibits harassment of any type. As a result of failure to follow Rule #10, the Appellant was suspended on [redacted], and his mother was asked to come pick him up immediately.

The material facts are uncontested. The Appellant contested the suspension by presenting evidence that he had not violated rules in the past and had never been a behavior problem. That did not effectively contest the evidence he had failed to follow rule 10 on [redacted], after having been warned about a possible suspension. There was also an attempt to evidence that the suspension was given as retaliation for the Appellant having obtained a Personal Protection Order against another member of the [redacted]. This was effectively refuted with uncontested, credible evidence that neither the [redacted] Director nor any staff involved in any of the incidents or suspension had knowledge of the Personal Protection Order prior to determining the Appellant was to be suspended for one week, or notification of the Appellant and his mother of

the suspension. No evidence was presented that the Appellant actually adhered to the staff instruction to stop following the other participant. There was no evidence contesting the material facts. The facts support the determination that the Appellant violated Rule #10. The facts support the determination that suspension was warranted given that the Appellant had been warned just one week before that he was to adhere to all the rules or he would in fact be suspended. There is no basis upon which this ALJ could find the suspension was improper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Appellant was entitled to a hearing because his Medicaid funded service was suspended and that the CMH suspension was appropriate.

IT IS THEREFORE ORDERED that:

[redacted] decision to suspend the Appellant's [redacted] services for one week is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 7/29/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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.