STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2009-24081CMH
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], represented Appellant. [redacted]) appeared and testified on her own behalf. [redacted] appeared and testified as witnesses on behalf of Appellant. [redacted], Manager of Due Process, represented the Department's agent, [redacted] Mental Health Service Provider [redacted], appeared and testified as a witness for [redacted].

ISSUE

Did [redacted] properly determine that Appellant was no longer eligible for ongoing Assertive Community Treatment (ACT) and authorize ACT for only 3 more months, effective [redacted]

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] woman and a Medicaid beneficiary who has been receiving ACT through [redacted] since [redacted]

2. [redacted] is a Prepaid Inpatient Health Plan (PIHP) under contract with the

Michigan Department of Community Health (Department) to provide Medicaid covered services to Medicaid beneficiaries in [redacted]

3. New Passages is a provider agency under contract with [redacted] to provide Medicaid covered services for individuals in [redacted].

4. Appellant has been receiving ACT from New Passages 3 days per week at all times relevant to this matter. (Exhibit 1, p. 15)

5. The Appellant was living, independently, in her own apartment at the time relevant to this matter.

6. Appellant was diagnosed with a Schizoaffective Disorder, Bipolar Type. (Exhibit 1, p. 4)

7. According to an ACT Review dated [redacted]: Appellant is medication compliant; she has histrionic behaviors when faced with change; she is very fragile, but does not have current significant psychotic/affective symptoms; she has loud angry outbursts when frustrated; and she has not had any inpatient psychiatric hospital services or crisis services since [redacted] (Exhibit 1, pp. 15 & 16)

8. Appellant requested ACT through [redacted] another year.

9. [redacted] provided Appellant with Adequate Notice that it is not medically necessary for her to continue to remain authorized for ACT; however, she would continue to receive it from New Pasages for the next 3 months, "after which medical necessity will need to be reviewed again." (Exhibit 1, p. 17)

10. On [redacted], the State Office of Administrative Hearings and Rules received the Appellant's request for an administrative hearing, protesting the determination that she was no longer eligible for ongoing ACT.

11. [redacted] ACT action was deleted pending hearing.

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.

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—

Under approval from the Center for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a Section 1915(b) waiver called the Medicaid Managed Specialty Services and Support program waiver. The CMH contracts with the Michigan Department of Community Health (MDCH or Department) to provide services under the Managed Specialty Service and Supports Waiver and other State Medicaid Plan covered services.

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.* The CMH must offer, either directly or under contract, those services/supports included as part of the contract between the Department and the CMH.

The *MDCH Medicaid Provider Manual, Mental Health/Substance Abuse section, Section 4, October 1, 2006, pages 23 - 27* details the purpose of and eligibility criteria for ACT services. In pertinent part:

> **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. The team also 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 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 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.

4.2 TARGET POPULATION

ACT services are targeted to beneficiaries with serious mental illness who require intensive services and supports and who, without ACT, would require more restrictive services and/or settings.

- Beneficiaries with serious mental illness with difficulty managing medications without ongoing support, or with psychotic/affective symptoms despite medication compliance.
- Beneficiaries with serious mental illness with a co-occurring substance disorder.
- Beneficiaries with serious mental illness who exhibit socially disruptive behavior that puts them at high risk for arrest and inappropriate incarceration or those exiting a county jail or prison.
- Beneficiaries with serious mental illness who are frequent users of inpatient psychiatric hospital services, crisis services, crisis residential, or homeless shelters.
- Older beneficiaries with serious mental illness with complex medical/medication conditions.

4.5 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 persistent 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 multiple daily contacts and 24-hour, seven-days-per-week crisis availability provided by a multi-disciplinary team, which includes psychiatric and skilled medical staff.

The ACT acute service selection guideline covers criteria in the following domain areas:

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), including personality disorders.

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.

- Self-Care/Independent Functioning - Disruptions of self-care, limited ability to attend to basic physical needs (nutrition, shelter, etc.), seriously impaired interpersonal functioning, and/or significantly diminished capacity to meet educational/occupational role performance expectations.
- Drug/Medication Conditions - Drug/medication compliance and/or coexisting general medical condition which needs to be simultaneously addressed along with the psychiatric illness and which cannot be carried out at a less intensive level of care. Medication use requires monitoring or evaluation for adherence to achieve stabilization, to identify atypical side effects or concurrent physical symptoms and medical conditions.
- Risk to Self or Others - Symptom acuity does not pose an immediate risk of substantial harm to the person or others, or if a risk of substantial harm exists, protective care (with appropriate medical/psychiatric supervision) has been arranged. Harm or danger to self, self-mutilation and/or reckless endangerment or other self-injurious activity is an imminent risk.

Intensity of Service ACT team services are medically necessary to provide treatment in the least restrictive setting, to allow beneficiaries to remain in vivo, to improve the beneficiary's condition and/or allow the person to function without more restrictive care, and the person requires at least one of the following:

- An intensive team-based service is needed to prevent elevation of symptom acuity, to recover functional living skills and maintain or preserve adult role functions, and to strengthen internal coping

resources; ongoing monitoring of psychotropic regimen and stabilization necessary for recovery.

- The person's acute psychiatric crisis requires intensive, coordinated and sustained treatment services and supports to maintain functioning, arrest regression, and forestall the need for inpatient care or a 24-hour protective environment.
- The person has reached a level of clinical stability (diminished risk) obviating the need for continued care in a 24-hour protective environment but requires intensive coordinated services and supports.
- Consistent observation and supervision of behavior are needed to compensate for impaired reality testing, temporarily deficient internal controls, and/or faulty self-preservation inclinations.
- Frequent monitoring of medication regimen and response is necessary and compliance is doubtful without ongoing monitoring and support.
- Routine medical observation and monitoring are required to affect significant regulation of psychotropic medications and/or to minimize serious side effects.

Discharge Cessation or control of symptoms is not sufficient for discharge from ACT. Recovery must be sufficient to maintain functioning without support of ACT.

- The beneficiary no longer meets severity of illness criteria; has demonstrated the ability to meet all major role functions for a minimum period of one year as addressed in the Individual Plan of Service; and is transitioned into less intensive services. The transition plan includes appropriate supports and services, beneficiary preferences, and a provision for return to ACT services if needed.
- Engagement of the individual in ACT is not possible as deliberate, persistent and frequent assertive team outreach including face-to-face engagement attempts and legal mechanisms, when necessary, have been consistent, unsuccessful, and documented over many months; and an appropriate alternative plan has been established with the beneficiary.
- Beneficiary has moved outside of the geographic service area and contact continues until service has been established in the new location.

Medicaid Provider Manual, Mental Health/Substance Abuse, SECTION 4-ASSERTIVE COMMUNITY TREATMENT PROGRAM, July 1, 2009

Appellant was diagnosed with a Schizoaffective Disorder, Bipolar Type. Appellant has been receiving ongoing ACT services through [redacted], and New Passages is under contract with [redacted] to provide the ACT services to Appellant. [redacted] provided evidence to establish that a request for the authorization of one year of ACT services for Appellant was received on [redacted]. [redacted] completed a review and determined that it would authorize ACT services for Appellant for 3 months; however, it is not medically necessary for her to continue to receive ongoing ACT services. According to the [redacted] witness, [redacted] is proposing to discharge Appellant from ACT and transfer her to case management services after 3 months. [redacted] did state in its Adequate Notice to Appellant that after the 3-month time period, "medical necessity will need to be reviewed again. (Exhibit 1, p. 17)

Appellant's representative testified that: she has known Appellant for 26 years; Appellant can be violent and is unable to protect herself from people; Appellant has no judgment and cannot use transportation, independently; and she is afraid Appellant will forget to take her medications if she does not continue to receive ACT services. Appellant's representative testified that Appellant is physically and verbally abusive when she is off of her medications, and Appellant experienced an anxiety attack when she was informed that she would no longer receive ACT services from her current provider. Appellant's witnesses/sisters testified that Appellant has a good relationship with her current provider of ACT services, and Appellant does not like change. Appellant testified that she is happy with services that she has been receiving, and she wants to keep the same provider of ACT services.

The CMH provided sufficient evidence that the Appellant no longer met the severity of illness and intensity of service criteria for ACT at the time of review. [redacted] established that: Appellant has been compliant with taking oral medications and mentally stable on medications; she has been receiving ACT services only 3 times per week; she has been living on her own, independently; she has not experienced significant psychotic/affective symptoms; and she has not received any inpatient psychiatric hospital services or crisis services since [redacted]. In addition, [redacted], Appellant's ACT provider from [redacted], testified that he is not sure whether it is medically necessary for Appellant to continue to receive ongoing higher intensity ACT bundle of services.

In conclusion, Appellant did not provide sufficient evidence that it is medically necessary for her to receive higher intensity ACT services. Therefore, this Administrative Law Judge must uphold [redacted] eligibility determination.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [redacted] properly determined that Appellant was no longer eligible for ongoing Assertive Community Treatment (ACT) services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 9/17/2009

***** 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.