

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-32972 CMH

Case No. ██████████

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████, Guardian and Authorized Representative, appeared on behalf of ██████████, who also appeared. Also appearing as witnesses for the Appellant were ██████████, ██████████, ██████████, and ██████████.

██████████
Services Provider (██████████), an agency contracted with the Department of Community Health (Department) to provide Medicaid-funded specialty mental health services and supports to Medicaid beneficiaries. Also appearing as witnesses for the Department were ██████████, Supports Coordinator, and ██████████, Program Supervisor.

ISSUE

Did ██████████ properly terminate supported employment services from the Appellant's Individual Plan of Service?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. Appellant is an adult Medicaid beneficiary currently receiving Medicaid-funded mental health services through ██████████. He was receiving supported employment services 3 days per week, 6 hours per day.

2. Effective [REDACTED], [REDACTED] terminated supported employment services from the Appellant's Individual Plan of Service (IPOS) when [REDACTED] ceased to be a provider within the [REDACTED] provider network. At that point, [REDACTED] offered the Appellant the following alternative services:
- Skill building services provided by the [REDACTED], 1 day per week for 6 hours per day. Program activities assist the Appellant to "increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support." (MPM, Section 17.3K; pp. 32-33)
 - A social recreation program 1 day per week for 3 hours.
 - \$160 per month to purchase one to one staffing in order to provide the Appellant the opportunity for community outings or volunteer work activities specific to his choosing.
 - Referral to the transitional employment program, which works to develop community job sites (a component of supported/integrated employment—MPM, Section 17.3M; pp. 34-35) to meet the individual needs of program referrals.

(Hearing Summary; Exhibit 1; p. 1)

3. The Appellant's IPOS, Statement of Medical Necessity, indicates the need for support to maintain a "...sufficient level of functioning in order to achieve his goals of maintaining community employment and improving work skills." The IPOS, Goal Outcome, provides that the Appellant will "...improve his self-sufficiency and his work skills to assure his success on the community employment work crew by 06/10." *(Exhibit 1; p. 10)*
4. At this time, there are no employment opportunities available within the [REDACTED] network to meet the Appellant's supervisory and health and safety needs. *(Hearing Summary-Exhibit 1; p. 1)*
5. On July 31, 2009, [REDACTED] issued to the Appellant a Medicaid Advance Notice of Action, proposing to terminate Supported Employment services, and in its place substitute different services, as articulated under Finding of Fact #2 above.

6. On [REDACTED], the Appellant, by and through his Guardian, filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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 (MDCH) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) Habilitation and Supports Waiver (HSW).

[REDACTED], a Prepaid Inpatient Health Plan (PIHP), contracts with the Michigan Department of Community Health to provide 1915(b) mental health services. The PIHP's contract with the Department requires that all services paid for with Medicaid funds must be medically necessary.

[REDACTED] termination of Supported Employment services is due entirely to the fact that [REDACTED] is no longer a network provider of those services, not that the services are no longer medically necessary. [REDACTED] proposes to substitute the alternative services articulated under Finding of Fact #2 above in its place as a measure of meeting the Appellant's needs identified in his IPOS.

In performing the terms of its contract with the Department, the PIHP must apply Medicaid funds only to those services deemed medically necessary or appropriate. The Department's policy regarding medical necessity provides as follows:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or

- *Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity. (Emphasis supplied by ALJ)*

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and

- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

Deny services that are:

- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
- experimental or investigational in nature; or
- for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

***Medicaid Provider Manual; Mental Health/Substance Abuse;
Version Date: July 1, 2009; Pages 12 through 14***

Here, ██████████ proposes to substitute the Medicaid-covered service of Skill Building Assistance for Supported/Integrated Employment Services. These services are identified as “additional” mental health services (B3 services) under Section 17 of the MPM, and are defined, in pertinent part, as follows:

17.3.K. SKILL-BUILDING ASSISTANCE

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support. Skill-building assistance may be provided in the beneficiary’s residence or in community settings.

Documentation must be maintained by the PIHP that the beneficiary is not currently eligible for sheltered work services provided by Michigan Rehabilitation Services (MRS).

Information must be updated when the beneficiary's MRS eligibility conditions change.

Coverage includes:

- Out-of-home adaptive skills training: Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and supports services incidental to the provision of that assistance, including:

Aides helping the beneficiary with his mobility, transferring, and personal hygiene functions at the various sites where adaptive skills training is provided in the community.

When necessary, helping the person to engage in the adaptive skills training activities (e.g., interpreting).

Services must be furnished on a regularly scheduled basis (several hours a day, one or more days a week) as determined in the individual plan of services and should be coordinated with any physical, occupational, or speech therapies listed in the plan of supports and services. Services may serve to reinforce skills or lessons taught in school, therapy, or other settings.

- Work preparatory services are aimed at preparing a beneficiary for paid or unpaid employment, but are not job task-oriented. They include teaching such concepts as attendance, task completion, problem solving, and safety. Work preparatory services are provided to people not able to join the general workforce, or are unable to participate in a transitional sheltered workshop within one year (excluding supported employment programs).

Activities included in these services are directed **primarily** at reaching habilitative goals (e.g., improving attention span and motor skills), not at teaching specific job skills. These services must be reflected in the beneficiary's person-centered plan and directed to habilitative or rehabilitative objectives rather than employment objectives.

- Transportation from the beneficiary's place of residence to the skill building assistance training, between skills training sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Services that would otherwise be available to the beneficiary.

17.3.M. SUPPORTED/INTEGRATED EMPLOYMENT SERVICES

Provide job development, initial and ongoing support services, and activities as identified in the individual plan of services that assist beneficiaries to obtain and maintain paid employment that would otherwise be unachievable without such supports. Support services are provided continuously, intermittently, or on a diminishing basis as needed throughout the period of employment. Capacity to intervene to provide assistance to the individual and/or employer in episodic occurrences of need is included in this service.

Supported/ integrated employment must be provided in integrated work settings where the beneficiary works alongside people who do not have disabilities.

Coverage includes:

- Job development, job placement, job coaching, and long-term follow-along services required to maintain employment.
- Consumer-run businesses (e.g., vocational components of Fairweather Lodges, supported self-employment)
- Transportation provided from the beneficiary's place of residence to the site of the supported employment service, among the supported employment sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Employment preparation.
- Services otherwise available to the beneficiary under the Individuals with Disabilities Education Act (IDEA).

***Michigan Department of Community Health
Medicaid Provider Manual
Mental Health/Substance Abuse
Version Date: October 1, 2009
Pages 111- 114***

The PIHP testified the sole reason supported employment services were terminated was because Mid-Michigan Industries is no longer a provider within their network of contract providers. The PIHP further indicated that, but for this development, the Appellant remains

eligible for supported employment services. Finally, the PIHP indicated that it is providing the Appellant with alternative services through the [REDACTED] and [REDACTED], and that the services are addressing the goals articulated in the Appellant's IPOS.

For the following reasons, I must disagree with the PIHP's position.

A review of the definitions assigned by the MPM to Supported/Integrated Employment and Skill Building Services are distinctly different.

Supported/Integrated employment services provide a beneficiary with job development, initial and ongoing support services, and activities as identified in the individual plan of services that assist beneficiaries to obtain and maintain paid employment that would otherwise be unachievable without such supports. (Emphasis supplied by ALJ) Supported/integrated employment services assist a beneficiary with job placement, job coaching, and long-term follow-along services required to maintain employment.

In contrast, skill-building assistance consists of activities identified in the individual plan of service and designed by a professional within his/her scope of practice that assists a beneficiary to increase his or her economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support, but specifically exclude job placement, job coaching and services designed to maintain paid employment.

Here, the Appellant was gainfully employed at a job site within the [REDACTED] network. The only provider available to the [REDACTED] is, for whatever reason, no longer available. The goals articulated in the Appellant's IPOS include maintaining community employment and improving self-sufficiency. (*Exhibit 1; p. 10*)

The PIHP specifically represented at hearing there are no employment opportunities within its provider network. Under its contractual obligations with the Department, this cannot be a reason to terminate what are otherwise medically necessary supports and services. Because the services proposed by [REDACTED] do not include paid employment, they are not comparable to the services the Appellant was previously receiving, as they do not directly promote the goals of maintaining community employment or improving self-sufficiency. As such, I must conclude that [REDACTED] has erred in terminating supported/integrated employment services.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that [REDACTED] has inappropriately terminated supported/integrated employment services from the Appellant's IPOS.

[REDACTED]
Docket No. 2009-32972 CMH
Decision and Order

IT IS THEREFORE ORDERED that:

GCCMHSP's decision is REVERSED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: _____

***** 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.