

**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. 2009-30043 CMH

Case No. [REDACTED]

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, an in-person hearing was held on [REDACTED]. [REDACTED], appeared as Authorized Representative for [REDACTED] (Appellant), who also appeared. Also appearing as witnesses for the Appellant were [REDACTED], Behavioral Specialist and Licensed Psychologist, [REDACTED] and [REDACTED].

[REDACTED], Fair Hearing Officer, appeared on behalf of the [REDACTED] ([REDACTED]), an agency contracted with the Michigan Department of Community Health to provide Medicaid-funded specialty mental health supports and services (hereafter, 'Department'). Also appearing as witnesses for the Department were [REDACTED], Developmental Disability Supervisor, [REDACTED]; [REDACTED], Supports Coordinator, [REDACTED], Clinical Coordinator, [REDACTED], Psychologist and [REDACTED], Supervisor, [REDACTED].

ISSUE

1. Has the Department properly terminated Supported Independent Housing?
2. Has the Department properly denied the Appellant's request for Community Living Supports?

FINDINGS OF FACT

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

1. The Appellant is an adult Medicaid beneficiary who is receiving Medicaid-funded specialty mental health services and supports through [REDACTED], an affiliate and/or contracted agency of [REDACTED]
2. The Appellant is a [REDACTED] with a diagnosis of Bipolar Disorder and Asperger's Disorder. He currently resides in an adult foster care home, but previously resided with his mother and step father in [REDACTED] Michigan, after Supported Independent Housing services were terminated. That facility consisted of an apartment the Appellant shared with other individuals. (*Exhibit 1; [REDACTED] Center Assessment, dated November 18, 2008; pp. 1 of 14; and 11 of 14*)
3. Despite some deficits, the Appellant is a high functioning individual who is capable of living independently and working in the community. He worked with an individual at [REDACTED] on finding supported employment opportunities, but was discontinued due to his lack of motivation. (*Exhibit 1; [REDACTED] Assessment, dated November 18, 2008; p. 12 of 14*)
4. The Appellant possesses a strong desire to work as well as to receive a college degree to become a licensed automotive technician. He has a strong interest in mechanics and computers, and enjoys riding a bike, bowling and fishing. The Appellant has a great deal of needs and desires for which he possess the capability of achieving. However, he has had problems with motivation in the past and present, and needs structure and guidance to learn and complete daily tasks to prepare him for future employment. (*Exhibit 1; [REDACTED], dated November 18, 2008; p. 12 of 14*)
5. The Appellant's [REDACTED], Psychological Assessment includes findings that his challenging behaviors appear to be problem-solving in nature, and that, on a relatively frequent basis, contacts friends or family during inappropriate night-time hours. The psychologist who met with the Appellant was able to observe him, and concluded he was very verbal, functioned at a higher level which allowed him to write or journal issues that were upsetting him, thus minimizing the disruption in the apartment setting associated with the phone calls. (*Exhibit 1; [REDACTED] Psychological Assessment dated May 4, 2009; p. 17*)

6. The Appellant's ██████████, Behavior Treatment Plan addressed the Appellant's behaviors by providing him staff to assist in problem solving, providing transitional hour staff to monitor his use of the phone during non-waking hours, and reducing medication.
7. While reviewing the Appellant's file for purposes of measuring outcomes of therapy, ██████████ became concerned that Supported Independent Housing and supports coordination were appropriate due to evidence that the Appellant simply lacked the motivation to accomplish stated goals.
8. On ██████████ issued an Action Notice and Review Rights, terminating Supports Coordination, Supported Independent Housing, Assessment, Behavioral Management Committee and Supported Employment. (*Exhibit 1; p. 45*)
9. On ██████████, ██████████ issued a second Action Notice and Review Rights, denying the Appellant's request for Community Living Supports, and for essentially the same reasons---that evidence suggested the Appellant was unmotivated to meet articulated goals and objectives. Therefore, the services presently received were not medically indicated.
10. ██████████ has offered to provide the Appellant Dialectical Behavioral Therapy. As the date of hearing, the Appellant has refused this service.
11. ██████████ terminated the above-referenced services because the Appellant's motivational issues suggested a lack of medical necessity for the services provided or requested, and, because the Appellant family continued to employ medication management, psychiatric and group therapy services from external, non-Medicaid affiliated or approved providers. (*Exhibit 1; p. 37*)
12. Under the "Summary of Progress" section of the Appellant's Discharge Plan, the clinician notes the following:

"Treatment goals listed below were not met as the primary focus and energy of all involved centered around ██████████ motivation, anger and impulsivity. ██████████ rarely participated in services as they were intended to be provided. These problems continue at the time of discharge and ██████████'s family has chosen external services for all psychiatric and psychological services. ██████████ mother has been very involved with the SIH provider, often making accusations

against staff leading to chaotic energy which [REDACTED] appeared to enjoy because it often resulted in him not being held accountable and therefore reinforcing his negative behaviors.

[REDACTED] mother has been persistent that he needs assistance to “process” everything, however this ‘processing’ often leads to increased attention, decreases his responsibility and ultimately reinforces his negative behaviors and enables him to blame his lack of motivation or follow through on his disability. The idea that he needs this level of assistance with ‘processing’ is also not consistently supported with the external evaluations and reports F [REDACTED] has received. In addition, they refuse to allow [REDACTED] to perform any clinical evaluations to support their theory and external diagnoses.”

(Exhibit 1; [REDACTED] Center Discharge Plan; p. 39)

13. On [REDACTED], the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health, regarding both the [REDACTED] termination/denials of service.

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) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. [REDACTED] contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

It is undisputed the Appellant's remains eligible for Medicaid-funded specialty mental health services. Rather, the issues presented are whether the Department's termination of Supported Independent Housing, and denial of community living supports is appropriate.

Regarding an appeal filed with the State Office of Administrative Hearings and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

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. 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.

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.
- Documented in the individual plan of service.

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.

Version

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

[REDACTED] who possesses a Bachelors Degree in Psychology, was the Appellant's supports coordinator from [REDACTED]. His job involved monitoring the Appellant's services, and linking him to other services during this time. [REDACTED] testified he began to question whether the Appellant's medication consumption might be hindering his ability to perform expected activities, and whether the high level of care through SIH was medically indicated, given that the Appellant's problems appeared primarily the result of motivational deficiencies.

[REDACTED] testified he is a Limited License Psychologist with 20 years experience in the field of mental health treatment. His duties include the creation of behavioral and treatment plans and guidelines as a method of enhancing the positive and minimizing the negative or mal-adaptive behaviors.

[REDACTED] reviewed his [REDACTED] Psychological Assessment and [REDACTED] Behavioral Plan in detail, pointing out that the Appellant's primary behavior included inappropriate use of the telephone during sleeping hours, some of which disturbed his roommates, and motivational issues. (*Exhibit 1; Behavioral Plan; pp. 20-21*). He further indicated the Appellant's behaviors were discussed and that the plan for future behavior would include journaling the reason he wished to talk to someone and sharing it with them as appropriate the following day.

The [REDACTED] Discharge Plan summarizes treatment goals as not having been met however, supporting an inference that SIH, a component of CLS, as well as other components of CLS, were inappropriate for this beneficiary, and therefore not medically necessary.

The documented evidence establishes that the Appellant's primary focus and energy toward all involved centered, and may still center, around his motivation, anger and impulsivity, and that, despite those problems, he rarely participated in services as they were intended to be provided. (*Exhibit 1; Discharge Plan; p. 39; see also Finding of Fact #12*). Given these factors, the evidence supports one conclusion, which may be that SIH and CLS are neither the most appropriate, nor medically necessary Medicaid-covered service.

The preponderance of the evidence presented supports a conclusion that the Appellant's placement at SIH did not effectively ameliorate his behaviors, due primarily to motivational issues, and other manageable behaviors.

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Here, the Appellant's mother testified that the Appellant was doing fairly well in his SIH placement in ██████████, but insists his behavioral plan was deficient in helping him to meet his goals. She offered no medical evidence in support of this claim however, nor did she produce evidence credibly refuting the professional findings and conclusions of ██████████ mental health professionals. The Appellant's mother essentially asserted the SIH placement was not given enough time to work.

The Appellant also called several witnesses.

The first witness, ██████████, is a school psychologist employed by the ██████████ ██████████, where the Appellant attended primary schooling. ██████████ described his knowledge of the Appellant, and opined that Dialectical Behavioral Therapy (DBT), the services offered by ██████████ was appropriate, given his knowledge of the Appellant's medical and mental health diagnoses.

The second witness, ██████████, testified she has treated the Appellant since he was 11 years old, or since about 2000. She voiced her disapproval of DBT, based on the Appellant's diagnoses. ██████████ asserted that DBT's group-setting approach to treatment is contraindicated by the Appellant's inability to immediately trust a therapist who may also be treating other patients. ██████████ also asserted that the Appellant needs the more restrictive environment of SIH and CLS because he is permanently incapable of living independently.

██████████ confirmed her basis for making these conclusions rested entirely on her experience with the Appellant dating back some 10 years. Under questioning by the ALJ, however, she acknowledged that SIH and CLS were unsuccessful in treating the Appellant's symptoms, and, at present, that he is living in an adult foster care home, where he appears to be doing fine in that setting, along with the services his family is providing privately.

Based on a preponderance of the evidence presented, I conclude that the Appellant's primary issues are motivational and that his lack of motivation hinders his ability to overcome negative behaviors. Placement in SIH, as a component of CLS, has been ineffective in treating the Appellant's symptoms. Thus, neither SIH, as a component of CLS, nor CLS, are medically necessary services and therefore not covered. Accordingly, ██████████ has properly terminated SIH and denied CLS.

[REDACTED]
Docket No. 2009-30043 CMH
Decision & Order

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that [REDACTED] properly terminated SIH, and denied CLS, services.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc:

[REDACTED]

Date Mailed: 11/13/2009

***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.