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. 2010-30880 CMH
Case No.

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 . Appellant appeared on her own behalf and provided testimony.

Community Mental Health (CMH), Fair Hearing Officer, represented the CMH. , Appellant's Therapist, ; , Director of l Behavior Therapy Services, ; and , appeared as witnesses for the CMH.

ISSUE

Did CMH properly terminate Appellant's case management and Behavior Therapy services?

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 year-old Medicaid beneficiary.

2. The Appellant is enrolled in CMH.

3. Appellant was authorized for Behavior Therapy services (DBT) from and case management services (CMS) from CMH in as authorized in her Person-Centered Plan. (Exhibits A, B).

4. Appellant was receiving DBT and CMS through CMH's agent

[redacted]. (Exhibits A, B).

5. DBT is a method of individual therapy that assists in developing skills to navigate through life and requires a commitment to prioritize DBT, to attend sessions and complete assignments. (CMH-TI testimony).

6. Appellant was receiving CMH services as a person with mental illness. (Exhibit A).

7. Beginning in [redacted] the Appellant began to miss scheduled DBT sessions and other CMH-TI meetings. (Exhibit A).

8. From [redacted], Appellant failed to appear for at least 12 scheduled CMH-IT appointments. (Exhibit A).

9. As a result of Appellant's failure to appear and failure to use her mental health services the CMH determined her DBT could be closed and she could be transitioned to cognitive therapy. (Exhibit A).

10. On [redacted], a reminder phone call was made to Appellant reminding her of her [redacted], DBT session and that DBT would end if she missed another appointment. (Exhibit A).

11. In a [redacted], DBT session, it was discussed with Appellant that if she missed one more appointment in the next month her DBT would be terminated and she would receive cognitive therapy instead. (Exhibits A and E).

12. On [redacted], Appellant canceled her DBT appointment twenty minutes prior to the appointment time. (Exhibit A).

13. On [redacted], the CMH/Touchstone Innovare sent an Advance Action Notice to the Appellant indicating that her DBT services would be terminated. (Exhibit B).

14. The Appellant's request for hearing was received on [redacted], and a hearing scheduled for [redacted]. (Exhibit C). The Appellant requested and was granted an adjournment until June [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…

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 waiver. CMH contracts with the Michigan Department of Community Health to provide specialty mental health services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

The CMH witness testified that DBT is a method of individual therapy that assists in developing skills to navigate through life and requires a commitment by the participant to prioritize DBT as a life activity, to attend sessions, and to complete assignments. The CMH witness testified that if Appellant did not participate in DBT it is not effective and therefore not medically necessary as a treatment.

The CMH case manager testified that because the Appellant was not utilizing DBT services, she considered transitioning Appellant to cognitive therapy. Witness stated that she explained to Appellant that if she missed another appointment in the next month DBT would be terminated. Witness testified that Appellant did not keep the agreement to attend four DBT sessions in a row, and it was determined that her DBT services would be terminated.

During the hearing, the CMH introduced evidence of the fact that Appellant was authorized for Behavior Therapy services but had failed to appropriately utilize the services from through . (Exhibits A, B, E).

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5* states that it is the CMH responsibility to determine Medicaid outpatient mental health benefits based on a review of documentation. The Medicaid Provider Manual sets out the medical necessity eligibility requirements, in pertinent part:

> **2.5.B. MEDICAL NECESSITY 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.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, January 1, 2010, page 13.

The Appellant testified that she believed she always called first before she missed her appointments. The Appellant said she never had a one month agreement to not miss any

more appointments and was shocked that she was terminated. The Appellant said she wanted to continue DBT with Mr. and did not want to be on a waiting list for cognitive therapy.

The CMH introduced evidence that Appellant missed at least one dozen CMH-TI appointments within the first three months of . The CMH provided evidence to support the fact that an agreement was made between the Appellant and DBT therapist to not miss appointments for a month but she had not kept her appointments for the month. (Exhibits A, E). The Appellant must prove by a preponderance of evidence that the CMH termination of DBT services was not proper, but did not meet that burden. The CMH provided credible evidence that its termination of Behavior Therapy services was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The CMH's termination of Appellant's Behavior Therapy services was proper.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 8/9/2010

***** 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.