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

IN THE MATTER OF

,
Appellant

_______________________/

Docket No. 2010-49424 CMH

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 appeared on behalf of the Appellant. His witness was clinician , CMH. , MD, represented the Department. His witness was .

ISSUE

Did the Department properly terminate counseling services for the Appellant at

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 d Medicaid beneficiary. (Appellant's Exhibit #1)

2. He is enrolled in a and is simultaneously receiving counseling services from CMH through . (*See* Testimony and Department's Exhibit A, and Appellant's Exhibit #1, p. 2)

3. The Appellant is afflicted with Reactive Attachment Disorder, Oppositional Defiance and Pervasive Developmental Disorder – it is stipulated that he meets the criteria for an individual with the criteria of a Seriously Emotionally Disturbed child (SED). (Department's Exhibit A, p. 1)

4. The Appellant was accepted at [redacted], for the receipt of medically necessary services.
5. The Appellant was placed at [redacted] residential setting on [redacted], where he received CCI services.

6. The Department learned of the duplication of services on or about [redacted]. (Department's Exhibit A, p. 1)

7. An advance action notice was dispatched on [redacted], advising the Appellant of the termination of [redacted] services effective [redacted], owing to the duplication of services. (Department's Exhibit A, p. 1)

8. The instant appeal was received by SOAHR on [redacted] (Appellant's Exhibit #1)

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

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…

Section <u>1915(c)</u> of the Social Security Act provides:

> The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded…

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 Supports Waiver (HSW). The Community Mental Health and Pathways contracts with the Michigan Department of Community Health to provide those services.

While it is axiomatic that Medicaid is the payer of last resort the CMH is the entry point for treatment of serious and persistent mental illness. The service criteria for this capitated provider is <u>medical necessity</u>. However, duplication of service is prohibited under the Medicaid Provider Manual:

[ ] Location of Service

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Medicaid does not cover services delivered in Institutions of Mental Disease (IMDs) for individuals between ages 22 and 64, as specified in §1905(a)(B) of the Social Security Act. <u>Medicaid does not cover services provided to children with serious emotional disturbance in Child Caring Institutions (CCIs).</u> Medicaid **does** cover services provided to children with developmental disabilities in a CCI that exclusively serves children with developmental disabilities, and has an enforced policy of prohibiting staff use of seclusion and restraint…. (Emphasis supplied)

MPM, §2.3, Mental Health [ ] July 1, 2010, p. 9

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

> **[ ] 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.
>
> ****
>
> **[ ] PIHP/CMHSP DECISIONS**
>
> Using criteria for medical necessity, a PIHP/CMHSP 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
> - <u>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;</u> 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.

MPM, Mental Health [ ];
§2.5 *et seq*, July 1, 2010, pp. 11-13

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In this case while the parties agreed that the Appellant is a disturbed young man in need of services – there was no question that [at present] he was receiving dual services in contravention of the . The Appellant's witness] opined that progress was being made with one on one counseling - however there was no evidence that the Appellant was not succeeding in the residential program at .

The Appellant's representative, [parent], had emergency services and treatment options explained in writing from counselor Wellborn – the Appellant's representative testified his desire to maintain the status quo owing to satisfactory results observed on weekend visits from the Appellant.

On review, the Appellant failed to preponderate his burden of proof that the exisiting duplication of services was either permissible or medically necessary.

The Department's action was proper when made.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly terminated services.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

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Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 11/12/2010

***** 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.