

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

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IN THE MATTER OF

Docket No. 2010-18912 CMH

Case No. [REDACTED]

[REDACTED]
Appellant

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], Appellant's [REDACTED] [REDACTED] appeared on behalf of the Appellant. The Appellant was present and provided testimony on his own behalf.

[REDACTED], represented the Department's agent, [REDACTED] (Agency).

[REDACTED]; [REDACTED] appeared as witnesses for [REDACTED].

ISSUE

Was the CMH termination of the Appellant's Medicaid covered skill-building service in accordance to policy?

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] year-old Medicaid beneficiary. The Appellant has mild mental retardation. (Exhibit 1, pp 4, 7, 12).
2. [REDACTED] is a Community Mental Health Services Program (CMH).
3. [REDACTED] is also known as [REDACTED].

4. [REDACTED] contracts with [REDACTED] to provide skill-building services to Medicaid clients.
5. The Appellant recently moved from his Adult Foster Care (AFC) into his own apartment.
6. The Appellant has two (2) drug related felony convictions.
7. The Appellant has been receiving services from CMH for several years. (Exhibits 1, pp 4, 12).
8. On [REDACTED], a Person-Centered Plan (PCP) for the Appellant was developed and signed. (Exhibit 4).
9. The PCP authorized [REDACTED] to provide 78 units of skill-building services per week at a segregated setting. (Exhibit 4).
10. Appellant's PCP also expressed concern about his lack of attendance at previously authorized skill-building services related to his alcohol and drug seeking behaviors. (Exhibit 4).
11. On [REDACTED] CMH sent the Appellant written advance notice that the CMH skill building services and specialized residential placement would be terminated, effective [REDACTED] (Exhibit 1, p 2). The reason given was "the documentation provided does not establish medical necessity." (Exhibit 1, p 2).
12. The Appellant's request for hearing was received by this Tribunal on [REDACTED], [REDACTED]. The Appellant contested the termination because, "I need to keep my [REDACTED] place because I have 2 felonies against me. So far my job at [REDACTED] keeps me out of trouble and is my only income." (Exhibit 2).

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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

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*. The CMH witness [REDACTED] testified during the hearing and introduced credible evidence that it terminated Appellant's [REDACTED] skill-building service because he was no longer using the Medicaid covered service to achieve the purpose it was authorized. Witness [REDACTED] described the purpose for authorization, as detailed in his PCP, as habilitative to increase Appellant's interpersonal skills and employment related skills to achieve economic self-sufficiency in a less restrictive setting.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, January 1, 2010, Pages 111 and 112*, states:

17.3.K. SKILL-BUILDING ASSISTANCE

Skill-building assistance consists of activities 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, 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. (Italics added by ALJ).*
- 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.

CMH witnesses [REDACTED] consistently testified and corroborated their testimony with CMH documentation that Appellant no longer used the Medicaid covered [REDACTED] skill-building services to reach habilitative goals of skills leading to independent employment. Instead the CMH witnesses testified that the Appellant uses skill-building as a means of income. The CMH witnesses added that Appellant has continued to abuse alcohol and drugs and fails to show for [REDACTED] skill-building services several times per week as a result of alcohol and drug use the night before. (Exhibit 1, 12-31; and Exhibit 5, p 3)

CMH witness [REDACTED] testified and introduced evidence to explain that Appellant knows the actions he needs to take to move forward but instead does not address his behavioral issues and chooses drug and alcohol. Witness [REDACTED] stated that Appellant no longer uses or values skill-building as a tool to move toward the next level and less-restrictive employment: MRS employment or supported employment. (Exhibit 1, 32-36)

CMH witness [REDACTED] stated it is no longer appropriate for the CMH to authorize and pay Medicaid dollars for the Appellant to treat [REDACTED] skill-building as a means of income while he refuses to work toward overcoming his addictions which are the primary cause of him lacking independent employment. CMH witness [REDACTED] explained that because the Appellant was no longer using skill-building as a rehabilitative service, medical necessity did not exist. A review of the skill-building activities covered by Medicaid according to the Medicaid Provider Manual section 17.3.K definition of Skill-Building Assistance support CMH witness [REDACTED] interpretation. (Exhibit 1, pp 45-46 and cited above). A review of the definition of medical necessity found at *Medicaid Provider Manual, Mental Health/Substance Abuse, January 1, 2010, Pages 14*, supports CMH's that there are other appropriate less-restrictive settings to assist Appellant toward employment. (Exhibit 1, pp 43-44)

The Appellant's [REDACTED] Case Manager and representative introduced a written statement on behalf of Appellant and also testified that there were several health and safety discrepancies within the CMH notes admitted into evidence. The Appellant's [REDACTED] Case Manager and representative testified that while the Appellant may not be able to prove skill-building is

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medically necessary, giving up on Appellant by terminating skill-building is not the answer to help him. The Appellant's representative requested and was granted an opportunity to submit into evidence several emails between [REDACTED]. (Exhibit 5)

The Appellant testified that he wanted "to keep the job." The Appellant's testimony corroborates the CMH position that Appellant views skill-building as a job instead of as a service to help him move to a less-restrictive and more independent employment.

The CMH witness [REDACTED] stated that as it was issuing the notice of terminating skill-building it sought a psychological evaluation to ensure that Appellant had problem-solving skills and CMH wasn't missing some way to serve Appellant. CMH witness [REDACTED] testified the Appellant failed to be present for his first psychological evaluation appointment, so he had to be present with Appellant and psychologist [REDACTED] at Appellant's apartment to ensure Appellant's participation. The evaluation took place on March 4, 2010, and the results concurred with a diagnosis of mild mental retardation. (Exhibit 1, 4-7) The evaluation noted the Appellant's score may have been artificially lower because he was frequently distracted by phone calls and friends stopping by his apartment. (Exhibit 1, 5) CMH witness [REDACTED] testified that Appellant scored at only one (1) deviation below the normal public for verbal communication and had reasoning skills within the mild mental retardation range. Witness [REDACTED] said his professional experience led him to believe that a person with mild mental retardation can often drive and hold employment and that after several years of skill-building it is no longer effective because there are no more skills that can be learned.

The CMH representative stated that CMH wanted to offer more appropriate services and has repeatedly offered substance abuse services to Appellant because it believes his addition issues are the true barrier to employment, but the Appellant has refused those substance abuse service offers.

The Appellant bears the burden of proving that he met the medical necessity criteria to have Medicaid-covered skill-building services. The CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building service.

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 Medicaid covered skill-building service was in accordance to policy.

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IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

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

CC:

[REDACTED]

Date Mailed: 04/27/2010

***** 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.