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

IN THE MATTER OF:

[redacted],

Appellant

_____/

Docket No. 2011-16962 CMH
Case No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant was represented by [redacted]. Her witness was [redacted]. The Department was represented by [redacted]. His witnesses were [redacted] and [redacted].

ISSUE

Did the Department properly propose termination of case management 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. At the time of hearing the Appellant is a [redacted], Medicaid/Medicare beneficiary. (Appellant's Exhibit #1)

2. The Appellant is afflicted with Bi-polar 1 disorder, HTN, esophageal reflux, glaucoma, cataracts, back pain, and hypothyroidism. (*See* Testimony, Department Exhibit B, p. 3 and Appellant's Exhibit #1)

3. The Appellant is found by the Department to be compliant with medications and not in need of assistance with personal care, communication, decision making, or community living supports. (Department's Exhibit A, p. 1 and *See* Testimony of [redacted])

4. Following a record review the Department determined that the Appellant no longer met the criteria of medical necessity for TCM. (Department Exhibit B-throughout and Testimony of [redacted])

5. The Appellant was advised of the Department's action on [redacted] (Department's Exhibit A, pp. 4, 5)

6. The Department advised the Appellant that her services would continue throughout the pendency of her appeal. She was advised of the proposed TCM termination and her additional hearing rights by Action Notice. (Department's Exhibit A, pp. 3, 4, 5)

7. The instant request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health 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

> 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 Supports Waiver (HSW).

The [redacted] contracts with the Michigan Department of Community Health to provide services under the Medicaid Managed Specialty Services and Support program waiver. Services are provided by [redacted] pursuant to its contract obligations with the PIHP/Department.

> Medicaid beneficiaries are entitled to services through CMH. The organization shall ensure access in accordance with the MDCH/PIHP and MDCH/CMHSP contracts as delineated in the mental health and substance abuse chapter of the Medicaid Provider Manual [MPM] …
>
> Contract, attachment P.3.1.1 §III, *et seq*.

The MPM describes the program under which the Appellant received her services – subject to medical necessity criteria as an adult with a serious mental illness.

> **TARGETED CASE MANAGEMENT**
>
> Targeted case management is a covered service that assists beneficiaries to design and implement strategies for obtaining services and supports that are goal-oriented and individualized. Services include assessment, planning, linkage, advocacy, coordination and monitoring to assist beneficiaries in gaining access to needed health and dental services, financial assistance, housing, employment, education, social services, and other services and natural supports developed through the person-centered planning process. Targeted case management is provided in a responsive, coordinated, effective and efficient manner focusing on process and outcomes.

Targeted case management services must be available for all children with serious emotional disturbance, adults with serious mental illness, persons with a developmental disability, and those with co-occurring substance use disorders who have multiple service needs, have a high level of vulnerability, require access to a continuum of mental health services from the PIHP, and/or are unable to independently access and sustain involvement with needed services.

Beneficiaries must be provided choice of available, qualified case management staff upon initial assignment and on an ongoing basis.

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Targeted case management shall not include direct delivery of ongoing day-to-day supports and/or training, or provision of other Medicaid services. Targeted case managers are prohibited from exercising the agency's authority to authorize or deny the provision of services. Targeted case management shall not duplicate services that are the responsibility of another program.

MPM, Mental Health [ ] §13, *et. seq*., April 1, 2011, pp. 67, 68

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MEDICAL NECESSITY CRITERIA

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

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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.

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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.

MPM, Mental Health, §§2.5 – 2.5.D,
April 1, 2011, pp. 12, 13, 14.

***

The Department witness, [redacted], testified that on second opinion review of the Appellant's case file she agreed that case management services were no longer medically necessary. Key among the criteria referenced by the [redacted] was the overall stability of the Appellant and an absence of symptoms or any mental health crisis. She added that there were no hospitalizations, the Appellant was living at home in a supportive environment and was still seeking standard employment. She concluded that even though she has a mental illness diagnosis that the Appellant has ability, supports[1] and a large spectrum of strengths to draw from. The Appellant was deemed stable and medically compliant. [redacted] believed

[1] In addition to family supports the Appellant's services of psychiatric counseling and supported employment remain extant.

that the remaining services and supports were a less restrictive and more efficacious service for the Appellant.

The Appellant's representative testified that the informal supports at home were not as described to the [redacted]. She said that she was the only support and that she is now undergoing treatment for anxiety, depression and migraines – although she is not yet involved in the mental health system herself. Her witness, [redacted], opined that the provision of case management services has prevented at least one hospitalization in [redacted] and that the Appellant would be unable to live alone. She added that as a [redacted] the Appellant she provides, under case management, the service of medical "mediator" between the family and assorted physicians seen by the Appellant. She testified that the Appellant still shows symptoms of agitation.

On review, while there was disagreement regarding the Appellant's community living supports it was apparent on this record that the Appellant has achieved overall stability with the goals established under the case management program provided by [redacted]. This was supported by the credible testimony of [redacted] and the assessment record contained in Department's Exhibit B. The Appellant now presents as an independent adult who is her own payee. She has a stable housing situation, drives, is involved in the community and remains compliant with her medications.[2] As always - if there is a change in condition the Appellant is free to seek further review or assistance from [redacted].

The Appellant has failed to preponderate her burden of proof. The Department's decision to terminate the Appellant's case management service was appropriate 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 the Appellant's services for lack of medical necessity.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[2] *See* Department's Exhibit B at page 7.

[redacted]
Docket No. 2011-16962 CMH
Decision and Order

cc: [redacted]

Date Mailed: 5/5/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.