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],

Docket No. 2011-26204 CMH
Case No. [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], attorney, appeared on behalf of the Appellant who was present and testified. His witnesses included: [redacted] and [redacted], Guardian. [redacted] attorney, represented the Department. Her witness was [redacted] Also in attendance was [redacted], standby Guardian.

ISSUE

Did the Department properly deny the Appellant's request for the mental health service of Skill Building Assistance (SBA) for lack of medical necessity?

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. (Appellant's Exhibit #1)

2. The Appellant receives services from the CMH in the form of assessments, supports coordination, treatment planning, psychiatric medication reviews, behavioral services and CLS. The Appellant's family has received home care training and respite. (Department's Exhibit A, [hearing summary] p. 2)

3. The Appellant is afflicted with mood disorder, NOS, moderate mental retardation, and primary idiopathic encephalopathy. (Department's Exhibit A, [hearing summary] p. 2 and sub F, p. 56)

4. There is no diagnosis of autism. See Testimony of [redacted] and Department's

Exhibit A at pages 32, 41, 51 and 57. *But see* Appellant's Exhibit #1 sub D.

5. The Appellant's parents are his Guardian and standby Guardian – who presently do not have program placement authority. (Department's Exhibit A, sub B, page 17, 18)

6. On [redacted], the Appellant sought approval for 858 units of Skill Building Assistance [out of home adaptive] and also 858 units of Skill Building Assistance [work prep] for the purpose of maintaining the Appellant's focus over the summer months.[1] (Department's Exhibit A, sub B, p. 9 and Appellant's Exhibit #1 – throughout)

7. On [redacted], the Department advised the Appellant, by Adequate Action Notice, that his request(s) for Skill Building Assistance were denied. His further appeal rights were contained therein. (Department's Exhibit A, sub B, pp. 9, 10, 11)

8. 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

[1] The Appellant's representatives argue that lack of structured activity leads to increased negative behavioral issues. *See* Testimony of [redacted].

> 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. Macomb County Community Mental Health (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. Natural Freedom, Inc., functions as one of the CMH contractors for the provision of Community Living Supports (CLS) for persons with mental illness.

Medicaid beneficiaries are only 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.

As a person afflicted with a serious mental illness the Appellant is entitled to receive services from the CMH. *See* Medicaid Provider Manual, (MPM) Mental Health [ ], Beneficiary Eligibility, §1.6, April 1, 2011[2], pp. 3, 4 and MCL 330.1100d(3).

However, the construction of those services and supports are not static, but rather subject to review by mental health professionals confirming that both a current functional impairment and a current medical necessity exist for receipt of those specialized services and supports.

Medical Necessity is defined as:

> Determination that a specific service is medically (clinically) appropriate, necessary to meet needs, consistent with the person's

[2] This edition of the MPM is substantially similar to the version in place at the time of the Department's denial and the Appellant's appeal.

diagnosis, symptomatology and functional impairments, is the most cost-effective option in the least restrictive environment, and is consistent with clinical standards of care. Medical necessity of a service shall be documented in the individual plan of services.

MPM, *Supra* §1.7, p. 5

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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. (Emphasis supplied)

MPM, *Supra*, §§2.5 – 2.5.D, pages 12-14.

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Skill Building Assistance under the MPM is defined as:

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice 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 incidental to the provision of that assistance, 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.
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> ● 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.
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> ● 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.
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> Coverage excludes:
>
> ● Services that would otherwise be available to the beneficiary.
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> MPM, §17.3.K, Skill-Building Assistance,
> Mental Health [ ], pp. 117, 118

Additional services exist for eligible individuals, subject to certain limitations, which promote community involvement, productivity and quality of life:

ADDITIONAL MENTAL HEALTH SERVICES (B3S)

PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning.

DEFINITIONS OF GOALS…

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to Insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation/Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

Community Inclusion and Participation

The individual uses community services and participates in community activities in the same manner as the typical community citizen.

Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.) activities. A beneficiary's use of, and participation in, community activities are expected to be

integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with mental retardation).

Independence "Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent of such freedom for him/herself during person-centered planning. For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently.

Productivity Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness. For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity may be successful participation in home, pre-school, or child care activities. Children under 18 would be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses. (Emphasis supplied)

MPM, *Supra,* pp. 103-104

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The Department witness, [redacted], testified that the Appellant's request for Skill Building Assistance was denied for lack of medical necessity and several other reasons. [redacted] said that the critical flaw in the Appellant's analysis was their misinterpretation on the use of the term "transition" as applied to the Appellant's inattention to task. She said the Appellant did not have an issue with transitioning between major events, as alleged by the Appellant's representative, but rather between smaller, more discreet tasks occurring during the day.

The Appellant sought enrollment in SBA as a means to "stay engaged" over the summer and to be ready [without regression] for the fall semester when he would return to school. The Appellant's representative viewed the issue of transition and his difficulty therein to be related to problems transitioning between major programs – such as school and employment. The Department witness further explained that a summer skill-building program was not medically necessary to eradicate behavior issues.

She added that SBA was an untimely request as the Appellant, at age [redacted], was still enrolled in school and would remain so enrolled until age [redacted] – when SBA could be relevant to employment. She said that behavior problems are better addressed with development of a behavior program. [redacted] said, "…fluctuations in problematic behaviors are not likely to be removed by consistency in routine alone…"

The Department witness also testified that the CMH (as PIHP) is required to maintain documentation that the Appellant is not already eligible for sheltered workshop services through Michigan Rehabilitation Services (MRS). [*See* MPM 17.3.K] [redacted] further explained that since the testimony of the Appellant witnesses seemed to focus on keeping the Appellant busy over the summer in a vocational sense that MRS would likely be a better fit for such services – and a better agency for what he wants to do. She said, "CMH does not have to authorize MRS services."

She concluded her testimony stating that under the terms of the guardianship – in force at the time of hearing - the Appellant's guardian(s) did not have program placement control for the Appellant. [*See* Department's Exhibit A, sub B, page 17]

The Appellant testified that he likes the present job at *Selfridge AFB* where he works stocking shelves.

The Appellant's representative was reminded at hearing that services are not static and while the CMH has concern for coordination of services their decision is not driven by financial concerns, but rather by the Appellant's care and medical necessity within the confines of the MPM.

The Appellant's representatives stressed their desire to provide the best environment for the Appellant roundly proclaiming that the Appellant enjoys work and that it helps his self esteem while cautioning that he is sensitive to changes in his routine. While not discounting the desire to work over the summer or the family's best intentions, the Department witness observed that his current array of services were adequate in scope, duration and intensity to achieve his goals – as the Department's evidence documented. [*See* Department's Exhibit A – throughout]

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On review, the views expressed by the Appellant's family do not support their analysis that increased oppositional behavior is the direct result of the lack of a structured program. The services requested via SBA do not have measurable criteria to gauge goal achievement or

how those goals would interface with the Appellant's educational program at [redacted]

It is clear that the Department did not arbitrarily deny Skill Building Services to the Appellant, but rather properly assessed the Appellant's exisiting services and condition against the dimensions of medical necessity.

The Appellant failed to preponderate his burden of proof that the Department erred in its denial of Skill Building Services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied the Appellant's request for Skill Building 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

cc: [redacted]

Date Mailed: 6/27/2011

***** 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.