**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

**Docket No.** 2011-52466 CMH
**Case No.** 11257479

[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], Executive Director, Citizens Alternative Residential Services, appeared on behalf of the Appellant.

[redacted], Fair Hearings Officer, represented the [redacted] County Community Mental Health Agency (Agency). Dr. [redacted] appeared as a witness for the Agency.

## ISSUE

Was the CMH reduction 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, born [redacted]. (Exhibit B, p 4) The Appellant is diagnosed with schizoaffective disorder bipolar type, posttraumatic stress disorder, and obsessive-compulsive personality disorder. Appellant also has an enlarged heart, high blood pressure, and hypercholesterolemia. (Exhibit B, p 15).

2. [redacted] County Community Mental Health contracts with [redacted] to provide skill-building services to Medicaid clients. (Exhibit A)

3. Appellant resides in [redacted] Residential Services, an Adult Foster Care (AFC) home and has lived there since [redacted]. (Exhibit B, [redacted])

4. The Appellant has been receiving skill building services at the rate of 5 days per week through [redacted] Community Health at [redacted] for at least the past 4 years. (Exhibit 1, Testimony).

5. In [redacted], a review of Appellant's skill building services was conducted. (Exhibit B, pp 14-17)

6. As a result of the review, on [redacted], CMH sent the Appellant written advance notice that her CMH skill building services would be reduced from 5 days per week to 4 day per week, effective [redacted]. (Exhibit B, pp 1-3). The reason given was, "The consumer appears to be able to remain stable with a less intense level of services including routine outpatient care, physician-prescribed medications as needed, community-based support and in-district special educational programming as needed." (Exhibit B, p 1)

7. The Appellant's request for hearing was received by this Tribunal on [redacted]. The Appellant contested the reduction, stating through [redacted], "Client has not remained stable since [redacted]. She has had three inpatient psychiatric admissions, most recently at BCA on [redacted]. The Goodwill staff constantly have to address Ms. Perry's behavior on a daily basis." (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. 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 that Appellant's skill-building services were reduced because it was felt that she could remain stable with the services she was already receiving at her AFC home. [redacted] testified that the goals in Appellant's most recent Individual Plan of Service, assisting with Activities of Daily Living (ADL's) and socialization, could and should be met through the AFC home, who is being paid by Medicaid to care for Appellant, as opposed to through skill-building. [redacted] also pointed out that Appellant has been attending skill-building services 5 days per week for at least the last 4 years and has shown no remarkable improvement.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, April 1, 2011, Pages 117 and 118,* 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.

- 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 witness Dr. [redacted] testified that Appellant still needs something to do to keep her busy on a daily basis, but that skill building was not the appropriate service for this goal. Dr. [redacted] indicated that Appellant could be placed in the club house program or a drop-in center immediately and that those programs would meet her needs of staying busy and interacting socially with others.

[redacted], Executive Director, [redacted] Residential Services, the AFC home where Appellant resides, testified that Appellant is currently not stable, even while attending skill-building services 5 days per week. [redacted] indicated that Appellant has had 3 inpatient psychiatric hospitalizations within the past year, the latest being in [redacted]. Ms. [redacted] testified that Appellant does not attend to her ADL's and that she has seen no improvement in her behaviors. [redacted] testified that Appellant often wanders off, goes into men's restrooms, and is very sexually preoccupied.

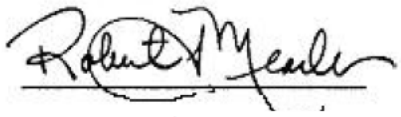
The Appellant bears the burden of proving that she met the medical necessity criteria to have Medicaid-covered skill-building services 5 days per week. As indicated above, "Skill-building assistance consists of activities that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support." Here, it is clear that Appellant is not using skill building services to assist herself in "economic self-sufficiency" or to engage in "meaningful activities". The evidence presented by both parties also supports the proposition that Appellant is gaining very little from skill-building services, except for getting out of the AFC home and some socialization. Those goals can more appropriately be met by other less intensive services, such as a drop-in center of the clubhouse program. In addition, the AFC home is already being paid by Medicaid to assist Appellant with those same goals. As such, the CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building services 5 days per week.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH's reduction of Appellant's Medicaid covered skill-building service from 5 days per week to 4 days per week was in accordance to policy.

**IT IS THEREFORE ORDERED** that:

The CMH decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 10/14/2011

***** 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.