

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-53890 CMH
Case No. 79765180

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant ██████████ appeared and testified on her own behalf. ██████████, Fair Hearings Officer, represented the ██████████ County Community Mental Health Organization (CMH). ██████████, Psychologist, and ██████████, Psychologist and Coordinator for MI Adult Case Services, also testified as witnesses for the CMH.

Following the hearing, the record was left open until ██████████ so that the CMH could submit additional evidence. No such evidence was timely submitted.¹

ISSUE

Did the CMH properly terminate Appellant's 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. Appellant is a ██████ year-old woman who has been receiving services through the CMH. (Testimony of Appellant; Testimony of ██████████).
2. On ██████████, the CMH sent Appellant notice that it was terminating her services in 12 days because Appellant had declined supports coordination assistance and community living supports assistance through her frequent no-shows, cancellations, and refusals to participate. (Exhibit 1, page 1).

¹ The CMH did submit evidence on ██████████, but the record was already closed. The CMH never sought an extension or offered any explanation for the untimely submission. Therefore, the late evidence will not be considered.

3. Appellant filed a request for review of grievance with the CMH's Local Dispute Resolution Committee. (Exhibit 2, page 1).
4. Appellant did not appear for the local appeal hearing scheduled for ██████████. (Exhibit 2, page 2; Testimony of Appellant). That same day, the CMH sent Appellant a letter stating that she must contact it within 7 days or it would assume she was no longer interested in services (Exhibit 2, page 3).
5. Appellant subsequently reapplied and was granted services through the CMH. (Exhibit 3; pages 1-2; Exhibit 4, pages 1-2; Testimony of ██████████).
6. On ██████████, the CMH sent Appellant another notice that it was terminating her services. (Exhibit 5, page 1). That notice of termination provided that Appellant "does not meet the criteria for programs for severe mental illness[.]" (Exhibit 5, page 1).
7. The effective date of the termination of services was identified as ██████████. (Exhibit 5, page 1).
8. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 6, page 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 C.F.R. § 430.0)

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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 C.F.R. § 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...

(42 U.S.C. § 1396n(b))

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) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. The CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Here, a preliminary question is what specific action by the CMH is at issue. As described above, Appellant received three notices of action and hearing rights. (Exhibit 1; Exhibit 3; Exhibit 5). The first notice, dated [REDACTED], provided that Appellant's services were being terminated in 12 days because:

Consumer declines supports coordination assistance and community living supports assistance (frequent (sic) no shows, cancellations, and refusals to participate). She has been referred to the community for medications.

(Exhibit 1, page 1)

The second notice, dated [REDACTED], provides that services will start within 14 days and that Appellant's "individualized plan of service/periodic review/progress review defines the amount, scope, and duration of the services that are authorized[.]" (Exhibit

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3, page 1).

The third notice, dated ██████████, provides that, on ██████████, Appellant's services would be denied because:

Services you had requested as a consumer were denied/limited because During [sic] the time period ██████████ was with CIP her psychiatric symptoms were well controlled by medications and she was compliant in taking her meds. She does not have a history of multiple hospitalizations because of mental illness.

Wendys (sic) functional impairments and relationship struggles are not a result of her mental illness.

For these reasons, Wendy does not meet the criteria for programs for severe mental illness.

(Exhibit 5, page 1)

Appellant's request for hearing was received by the Department on ██████████. (Exhibit 6, page 1). During the hearing, Appellant testified that she was challenging her "termination" from the program (Testimony of Appellant) and the CMH asserted that, while it had terminated Appellant's services through one CMH program for non-compliance, Appellant was mistakenly re-admitted into another CMH program before those services were also terminated on the basis that Appellant did not meet the criteria for that program (Testimony of ██████████).

However, while the CMH's representative and witness both testified that there were two separate CMH programs at issue in this case, the two notices of termination do not appear to reflect separate programs and they just generally provide that Appellant's services through the CMH have been terminated. Moreover, this Administrative Law Judge left the record open, in part, so that the CMH could clarify what programs were at issue. No subsequent clarification was provided. Based on the evidence in the record, Appellant's services were terminated, reinstated, and then terminated again. Given that timeline, only the second termination of services is at issue in this case. The first termination of services was rendered moot by the subsequent reinstatement of services.

With respect to the termination of services at issue in this case, the CMH found that Appellant did not meet the criteria for programs for severe mental illness. However, while ██████████ generally testified that Appellant did not meet the criteria for services, that testimony is unsupported by any other evidence. ██████████ testimony is also contradicted by Appellant's testimony and by the fact that Appellant's condition had previously been found to be severe enough to require services.

² While identified as a denial of services, the third notice actually related to a termination of services as Appellant's services had already been approved and she was already receiving them at the time of the action. The CMH also gave the advance notice required for a termination of services.

Most notably, there is no documentary evidence in the record supporting the termination outside of the notice of termination itself. The CMH has also failed to identify the policy underlying the termination or provide any evidence supporting its decision. The record was left open so that the CMH could identify the policies relied upon and the evidence it used to make its decision. Nothing was timely provided following the hearing.

Given the CMH's complete failure to supplement the record and provide the relevant policies and evidence it relied upon in terminating Appellant's services, this Administrative Law Judge finds that the preponderance of evidence weighs in favor of Appellant and that the CMH's decision must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly terminated Appellant's services on [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision to terminate services on [REDACTED] is REVERSED.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 11/28/2011

***** 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.