**STATE OF MICHIGAN**
**STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**
**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. 2011-6127 CMH
Case No. 83133485

## 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]. The Appellant appeared without representation. His witness was [redacted]. [redacted] represented the Department. Her witness was [redacted].

## ISSUE

Did the [redacted] Community Mental Health, hereinafter the Department, properly terminate the Appellant from Targeted Case Management (TCM)?

## 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 [redacted] Medicaid beneficiary.

2. The Appellant states he had a sudden onset of mental illness in [redacted]. (Department's Exhibit A, p. 7 and *See* Testimony)

3. The Appellant is argumentative. He is afflicted with Bipolar 1 mixed, Mood Disorder NOS, Opioid dependence, Borderline Personality Disorder, Narcissistic Personality Disorder, GERD, HTN, Cholesterol [sic], diverticulosis, hiatal hernia, herniated disc in neck, pinched nerve in neck, arthritis, scoliosis, osteopenia, low testosterone, chronic fatigue syndrome, fibromyalgia. He self reports many closed head injuries. (*See* Testimony and Department's Exhibit A, pp. 15, 19, 23, 27, 51, 52, 62 and Appellant's Exhibit #1)

4. The Appellant receives Methadone maintenance and refuses to take prescribed medications. (Department's Exhibit A, pp. 3, 7, 25, 51, 52, 58)

5. The Appellant receives SA services from the Methadone Clinic, including: therapy, labs and dosing. (Department's Exhibit A, p. 1)

6. The Appellant was advised of the Department's action on [redacted], to be effective on [redacted]. (Department's Exhibit A, pp. 1, 39-42)

7. The Department advised the Appellant of his appeal rights. (Department's Exhibit A, pp. 39-42)

8. The instant request for hearing was received by the State Office of Administrative Hearings and Rules 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] CMHSP 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] CMH pursuant to its contract obligations with the PIHP/Department.

The Medicaid Provider Manual describes the program under which the Appellant received his services – subject to medical necessity criteria:

> **TARGETED CASE MANAGEMENT [TCM]**
>
> 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.

****

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, January 1, 2011, pages 67, 68[1]

***

**MEDICAL NECESSITY CRITERIA**

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

***

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.

***

[1] This version of the MPM is identical to the edition in place at the time of appeal.

**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.

*Supra*, §§2.5 – 2.5.D, pages 13, 14.

***

The Department witness, [redacted], testified that the Appellant's TCM services were no longer medically necessary. Indeed the Appellant's psycho-social assessment and IPOS overwhelmingly demonstrated that the Appellant has made zero progress towards achieving any of his goals during his 22-sessions of therapy. The Department's testimony and evidence showed that the Appellant is argumentative and that he neither engaged with any of the (4) four therapists for resolution of his mental health issues nor seriously addressed his established goals.

The Appellant's own testimony demonstrated his argumentative nature. He admitted, however, that he did receive counseling services from his methadone program – albeit short lived. The Appellant emphasized his concern that termination from TCM "looks bad on his record" and that the only thing he seeks is to "return to work."

The Department witness further emphasized that outpatient therapy was unsuccessful owing to the Appellant's non-engagement and demonstrated lack of desire to address his problems. [*See* Department's Exhibit A at pages 51 through 54] The witness opined that his therapy

could be better managed through his methadone program. – particularly in light of his medication non-compliance.

On review it was fairly established that the Appellant simply did not meet the criteria for continued mental health therapy and that he would be best served by continued receipt of therapy from his methadone provider.

The Appellant failed to preponderate his burden of proof that the CMH erred in terminating his TCM and outpatient therapy.

The Department's decision to terminate services 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 TCM services for lack of continued 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: 2/15/2011

***** 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.