

**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:

Docket No. 2011-13290 ABW
Case No. 69687026

████████████████████
Appellant
_____ /

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 ██████████. ██████████ represented himself at hearing. The Appellant's ██████████ was present and testified on behalf of the Appellant.

████████████████████ (CMH), represented the PIHP. ██████████ CMH is the PIHP responsible for ██████████ on behalf of the Michigan Department of Community Health. ██████████ testified on behalf of the CMH. ██████████ was present on behalf of the CMH and testified. ██████████ and ██████████ were also present on behalf of the CMH.

ISSUE

Did the CMH of ██████████ properly deny mental health services for the Appellant?

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 an ABW beneficiary who resides in ██████████ County.
2. ██████████ Community Mental Health Services is the PIHP which is responsible to provide mental health and substance abuse services for beneficiaries who reside in ██████████ County.
3. The Appellant is ██████████ who sought out patient counseling services from ██████████ CMH in ██████████.
4. In ██████████, the Appellant had a mental health evaluation. His

primary diagnosis was determined to be cannabis dependence-early partial remission. He has a lengthy history of drug abuse/dependence including past methamphetamine use also.

5. Per the Appellant's report, his last cannabis use was [REDACTED] prior to the evaluation in [REDACTED].
6. The CMH determined therapy services through the CMH were not medically necessary based upon a primary diagnosis of cannabis dependence and lack of qualifying mental health diagnosis.
7. The Appellant objects to the denial of therapy services, citing past diagnosis of Intermittent Explosive Disorder and Mood Disorder NOS dating back to [REDACTED] when he received services as a Medicaid beneficiary.
8. On [REDACTED], the CMH sent a Notice denying mental health services and treatment. A referral for substance abuse treatment was provided.
9. The Appellant requested a formal, administrative hearing [REDACTED].

CONCLUSIONS OF LAW

On January 16, 2004, the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, approved the Adult Benefit Waiver to permit the state to use state funds and funds authorized under Title XXI of the Social Security Act to provide coverage to uninsured adults who were not otherwise eligible for Medicaid or Medicare. The program utilizes the Medicaid provider network and County-Administered Health Plans (CHPs) as managed care providers.

The Department's policy with regard to the Adult Benefits Waiver is found in the Medicaid Provider Manual:

SECTION 1 - GENERAL INFORMATION

This chapter applies to all providers.

The Adult Benefits Waiver (ABW), provides health care benefits for Michigan's childless adult residents (age 18 through 64) with an annual income at or below 35 percent of the Federal Poverty Level (FPL). Covered services and maximum co-payments for beneficiaries in this eligibility category are detailed in the following sections. Unless noted in Medicaid provider-specific chapters, service coverage and authorization requirements for the fee-for-service (FFS) beneficiaries enrolled in the ABW program mirror those required for Medicaid. Only those providers enrolled to provide services through the Michigan Medicaid Program may provide services for FFS ABW beneficiaries.

SECTION 1.1 - COUNTY ADMINISTERED HEALTH PLANS

ABW beneficiaries enrolled in CHPs are subject to the requirements of the respective CHP. In those counties operating nonprofit CHPs, all covered services for ABW beneficiaries must be provided through the health plan. CHPs administering the ABW program are required to provide the services as noted in the Coverage and Limitations Section of this chapter to ensure that benefits are consistent for all ABW beneficiaries across the FFS and CHP programs.

*Medicaid Provider Manual, Adult Benefits Waiver, J
July 1, 2009, Page 1.*

SECTION 3 - MENTAL HEALTH/SUBSTANCE ABUSE COVERAGE

Mental health and substance abuse services for ABW beneficiaries are the responsibility of the Prepaid Inpatient Health Plans (PIHPs) and the Community Mental Health Services Programs (CMHSPs) as outlined in this section. ABW mental health and substance abuse coverage is limited both in scope and amount to those that are medically necessary and conform to professionally accepted standards of care consistent with the Michigan Mental Health Code. Utilization control procedures, consistent with the medical necessity criteria/service selection guidelines specified by MDCH and in best practice standards, must be used.

3.1 MENTAL HEALTH SERVICES

PIHPs/CMHSPs are responsible for the provision of the following mental health services to ABW beneficiaries when medically necessary and within applicable benefit restrictions:

- Crisis interventions for mental health-related emergency situations and/or conditions.
- Identification, assessment and diagnostic evaluation to determine the beneficiary's mental health status, condition and specific needs.
- Inpatient hospital psychiatric care for mentally ill beneficiaries who require care in a 24-hour medically-structured and supervised licensed facility.
- Other medically necessary mental health services:
- Psychotherapy or counseling (individual, family, group) when indicated;
- Interpretation or explanation of results of psychiatric examination, other medical examinations and

procedures, or other accumulated data to family or other responsible persons, or advising them how to assist the beneficiary;

- Pharmacological management, including prescription, administration, and review of medication use and effects; or
- Specialized community mental health clinical and rehabilitation services, including case management, psychosocial interventions and other community supports, as medically necessary, and when utilized as an approved alternative to more restrictive care or placement.

Any beneficiary liability for the cost of covered services shall be determined by each CMHSP, according to the ability-to-pay provisions of the Michigan Mental Health Code and applicable administrative rules.

*Medicaid Provider Manual Adult Benefits Waiver
Version Date: April 1, 2010 Page 8*

In this case, the CMH asserts outpatient counseling services for a serious mental health condition is not medically necessary for the Appellant at this time. The evidence relied on to support this assertion is the finding that his primary diagnosis is a substance abuse disorder, rather than a finding of serious mental illness. It is asserted that because he lacks a primary diagnosis of mental illness, it is not medically necessary to provide mental health treatment services. He was referred for substance abuse treatment services. The CMH witness acknowledged the prior diagnosis of intermittent explosive disorder. She testified that current criteria for mental health diagnosis indicates that when there is a substance abuse problem co-occurring with mental health issues, the diagnosis is not considered reliable until the substance abuse issues are resolved. The long standing history of significant substance abuse over [REDACTED] time with only a minimal time in early partial remission at the time of evaluation ([REDACTED] in remission) is insufficient to find a mental health diagnosis as primary. Among the documents submitted by the CMH is the assessment conducted in response to the [REDACTED] request for counseling services. The assessment indicates a history of drug abuse, including [REDACTED] history of cannabis abuse, use of amphetamines and prescription drug abuse as well. The intake clinician also indicates the Appellant minimizes his substance abuse issues. It was asserted at hearing that according to the Medicaid Provider Manual criteria, a primary diagnosis of a substance abuse problem does not satisfy eligibility criteria. In other words, mental health treatment for substance abuse problems is not medically necessary. Substance abuse treatment is medically necessary and the Appellant was referred for the same.

The Appellant asserts he has anxiety and anger issues requiring mental health treatment. He further asserted he has no desire to use drugs and will not use again. He stated he is still friends with people who use and still hangs around with them and has no desire to use even when he is with them. He says he does not require drug abuse treatment due to his lack of desire to use drugs and ability to address his past use without treatment. He was asked at

hearing and stated he had not participated in any drug treatment of any kind. He stated his anger issues pre-date any substance use issues thus drug abuse issues should not be considered primary. He testified he does not understand how going to rehabilitation could help him if he is already clean. His statements included his assertion that he used drugs to self medicate his ADD and depression is the cause of his angry outbursts. He has gone so far as to cut himself in the past to get help. He admitted at hearing he had lost custody of his ██████████. When asked if substance abuse treatment had been part of the plan put into place with DHS to address return of his child he said he did not know. His ██████████ indicated on the record that it had been part of the plan for return of the child. The Appellant further testified that his ██████████ had been removed from their home supposedly for her protection.

The Appellant's ██████████ testified. She stated there is no difference in her ██████████ personality when he is using and or when he is not using. She said the only difference is that when he uses cannabis his depression mellows out. She said it is not fair to push someone away who is seeking help.

This ALJ has reviewed the material evidence of record. The Medicaid Provider Manual does require the PIHP's to provide medically necessary mental health treatment to ABW benefit waiver beneficiaries. Having a mental health condition is sufficient in most cases to "qualify" for treatment expected to alleviate the symptoms resultant from the condition. However, in cases where the primary diagnosis is of substance use/abuse disorder, the referral for substance abuse treatment is the medically necessary treatment. The CMH is correct in its claim that the primary diagnosis renders the request for mental health treatment alone not medically necessary. It is possible that after the substance abuse issue is addressed the Appellant may have a mental health condition that it is medically necessary to treat. This determination does not foreclose the possibility that the Appellant will be determined to have a need for mental health treatment in the future. At the time of the evaluation in ██████████ ██████████ the Appellant had refrained from substance use/abuse for only ██████████. This is very early partial remission according to the testimony provided by the intake clinician. The primary diagnosis made by the clinician is found more reliable and credible than the assertions of the Appellant at hearing. He did not establish the diagnosis was incorrect or that he had a primary need for mental health services at the time of evaluation.

Following ██████████ history of drug use that includes the entire adult lifetime of this Appellant, this ALJ cannot find the testimony from the Appellant is effective to establish he has no substance abuse issues requiring treatment. The Appellant's testimony indicates he lacks insight into the significant role substance abuse has played in his life. None of his testimony included statements of personal responsibility. He was not prepared to admit or possibly did not even know he was required to participate in substance abuse treatment in order to regain custody of his child. The only way for him to not know this was to not listen to the social worker who went over the plan with him or failed to even read it. He did not admit his ██████████ was removed to adult foster care due to domestic violence. His repeated insistence that he could not benefit from substance abuse treatment because he is clean is seen as a lack of willingness to recognize the expertise of people qualified to help him, despite the claim that he is reaching out supposedly to get help. In short, the testimony provided by the Appellant helps to demonstrate the intake clinician is right. The Appellant is minimizing his substance abuse issues, does not recognize the potential benefit to himself if he participates in it and is

not willing to listen to the recommendation of others about what his medical needs are at this time. While this may not be unique to the Appellant, it is demonstrative that he is indeed in very early, partial remission of his substance abuse problem.

In order for the Appellant to prevail in this case, he would have had to establish the primary diagnosis of substance use/abuse disorder is incorrect. This ALJ did consider all the evidence the Appellant placed into the record. Upon close review, the Appellant did not meet his burden of proof. As a result, this ALJ does concur with the CMH determination that outpatient counseling for a primary diagnosis of a serious mental health diagnosis is not medically necessary for this Appellant at this time. The referral for substance abuse treatment is established as medically necessary.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that [REDACTED] CMH services properly denied the Appellant's request for outpatient mental health therapy services.

IT IS THEREFORE ORDERED THAT:

The [REDACTED] CMH decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 3/28/2011

***** 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.