STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2011-1631 ABW
Case No. 3035921

[redacted]

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 [redacted]. [redacted] represented herself at hearing. [redacted] was present and testified on behalf of the Appellant.

[redacted] (CMH), represented the PIHP. [redacted] CMH is the PIHP responsible for [redacted] on behalf of the Michigan Department of Community Health. [redacted] for CMH was present on behalf of the Department. [redacted] was also present on behalf of the Department.

ISSUE

Did the CMH of [redacted] County properly propose to terminate 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 [redacted] County.

2. [redacted] is the PIHP which is responsible to provide mental health and substance abuse services for beneficiaries who reside in [redacted] County.

3. The Appellant is [redacted] who sought mental health treatment from [redacted] CMH in [redacted].

4. In [redacted], the Appellant had a mental health evaluation. Her primary diagnosis was determined to be polysubstance use. She has a lengthy history of drug dependence and methamphetamine use. As of [redacted] the Appellant had a recent relapse of Methamphetimine use.

5. The Appellant's secondary diagnosis is dysthymic disorder.

6. The Appellant had attended two of the four therapy sessions scheduled in her most recent service plan. The discharge summary indicates the Appellant stopped attending behavioral therapies when it became evident "no prescriptions were forthcoming". The discharge summary was completed [redacted]

7. In [redacted], the Appellant requested services from CMH and self reported relapse into methamphetamine use.

8. The CMH determined therapy services through the CMH were not medically necessary based upon a primary diagnosis of polysubstance use and lack of qualifying mental health diagnosis.

9. The Appellant objects to the denial of therapy services, citing major depression and past diagnosis of bi-polar disorder.

10. On [redacted], the CMH sent a Notice denying mental health services and treatment. A referral for substance abuse treatment was provided.

11. 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, Page1.

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 continued mental health treatment is not medically necessary for the Appellant. The evidence relied on to support this assertion is the finding that her primary diagnosis is a substance abuse disorder, rather than a finding of serious mental illness. It is asserted that because she lacks a primary diagnosis of mental illness, it is not medically necessary to provide mental health treatment services. She was referred for substance abuse treatment services. The CMH witness acknowledged the prior diagnosis of major depression as well as a history of bi-polar diagnosis. He testified that current criteria for mental health diagnosis indicates that when there is a substance abuse problem co-occuring with a mental health issues, the diagnosis is not considered reliable until the substance abuse issues are resolved. He said at this time the primary diagnosis is a substance abuse disorder and treatment is called for. 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 a [redacted] history of methamphetamine abuse which had been treated approximately [redacted] years ago. The Appellant reported a during the [redacted] [redacted] assessment a relapse into methamphetamine use about one month in length, as of [redacted]. Additionally, a pharmacy record for the Appellant appeared to be consistent with doctor shopping for

medications subject to abuse, such as Vicodin. She had requested Adderall from the CMH psychiatrist in the past as well and had discontinued her previous treatment when prescriptions were not available to her. This led the CMH intake specialist to determine the primary diagnosis was substance use and her dysthymic disorder was secondary to that. 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 she is depressed and cannot effectively address any substance use issues without the therapy requested from CMH. She contested the assertion she has doctor shopped or abused prescription medication at hearing. She stated medical procedures and complications there from resulted in hospitalizations and prescriptions for Vicodin. She did not address the evidence she had reported a relapse into methamphetamine use at hearing. The record was left open to accept documentation of medical records the Appellant asserts would evidence all the medical need for prescription Vicodin. The records submitted were accepted into the evidentiary record and reviewed by this ALJ. The records established she had a one day hospitalization for a hysterectomy and thereafter had an abcess and drain placement. There was no record of inpatient admission or surgery beyond the hysterectomy. The Appellant addressed the claim she had doctor shopped by stating she had to get prescriptions from doctors at a clinic that accepts her ABW benefits and that not all doctors do so it is not easy to find doctors who accept her ABW benefit. She said her primary care doctor is writing her prescriptions to treat her mental health conditions.

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. In order for the appellant to prevail in this case, she would have to establish the primary diagnosis of substance use/abuse disorder is incorrect. This ALJ did consider all the evidence the appellant brought to refute that assertion from the CMH and reviewed it very carefully. Upon close review, the Appellant did not meet her burden of proof. She did not address the material fact that she self reported in [redacted] when seeking therapy from the CMH, that she had relapsed into drug abuse with methamphetamine. This is a material fact that is left un-refuted by any evidence of record. As a result, this ALJ does concur with the CMH determination that continued mental health treatments are 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.

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

cc: [redacted]

Date Mailed: 1/3/2011

***** 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.