

**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:

██████████,

Appellant

_____ /

Docket No. 2011-25141 CMH
Case No. ██████████

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 ██████████. The Appellant appeared without representation. She had no witnesses. ██████████ represented the Department. Her witness was ██████████. Also in attendance was ██████████.

ISSUE

Did the ██████████ Community Mental Health Authority (██████████ CMHA) properly deny partial hospitalization for the Appellant because she did not meet eligibility criteria?

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 a ██████-year-old, Adult Benefit Waiver (ABW), beneficiary. She is a prior consumer of ██████ CMHA services. (Appellant's Exhibit #1 and See Testimony)
2. On assessment the Appellant is diagnosed with Bipolar Disorder, NOS, Major depressive disorder, single episode, moderate, and cocaine dependence. (Department's Exhibit A, sub 4)
3. On ██████████, based on the Appellant presenting to ██████████ in ██████████ with thoughts of suicide, a courtesy screening there recommended admission to a partial hospitalization program. (Department's Exhibit A)
4. On ██████████, the Appellant presented herself before the Department (via Common Ground) and met face to face with a clinician for assessment. (Department's Exhibit A – throughout)

5. The Appellant is homeless – she resides in the ██████████ homeless shelter in ██████████. She said they required a “clearance” from her to remain there. See Testimony of Appellant.
6. The Appellant said she returned to ██████ CMHA where she had previously received mental health services. (See Testimony of Appellant and ██████████)
7. On ██████████, the Appellant was screened for service eligibility and found to be ineligible for partial hospitalization. The assessing clinician determined that the Appellant did not meet hospital admission criteria under the Mental Health Code at MCL 330.1401. (Department’s Exhibit A, Sub 4 and See Testimony of ██████████)
8. The Appellant presented “no SI/HI intentions” and reported that her medication was helping. She was oriented to person, place and thing and displayed appropriate self-care. The assessing clinician observed no signs of distress in his assessment of the Appellant. (See Testimony of Marshall and Departments Exhibit A, sub 4)
9. The assessing clinician, in fact, remembered working with the Appellant and psychiatrist ██████████ in ██████████ in what he confirmed as a successful intervention. (See Testimony of ██████████)
10. The Appellant was notified of her denial and her further right of appeal by adequate action notice on ██████████. (Department’s Exhibit A, sub 1)
11. The instant appeal was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on ██████████. (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

¹ A mental health assessment.

operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

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...

Section 1915(c) of the Social Security Act provides:

The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded...

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). Oakland County Community Mental Health Authority (CMH) contracts with the Michigan Department of Community Health to provide those services.

Medicaid beneficiaries are only 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 MDCH/CMHSP Managed Specialty Supports and Services Contract, Sections 2.0 and 3.1 and Attachment 3.1.1, Section III(a) Access Standards-10/1/08, page 4, (i) directs a CMH to the Department's Medicaid Provider Manual for determining coverage eligibility for Medicaid mental health beneficiaries [and] (ii) to the Adult Benefits Waiver (ABW) Chapter of the Medicaid Provider Manual, if the beneficiary is an ABW beneficiary.

The Department's Medicaid Provider Manual (MPM), Adult Benefits Waiver Chapter outlines the scope of medical services available to ABW beneficiaries from PIHPs and the various CMH programs throughout the state as follows:

MENTAL HEALTH AND 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.

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.²

MPM, ABW, §3, Mental Health [], April 1, 2011, page 8

Additionally, the Department's assessing clinician also reported that the Appellant "failed to meet 401 criteria."

(1) As used in this chapter, "person requiring treatment" means (a), (b), (c), or (d):

- (a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- (c) An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others. This individual shall receive involuntary mental health treatment initially only under the provisions of sections 434 through 438.
- (d) An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily, who is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of his or her condition and whose

² This edition of the MPM is identical to the version in place at the time of notice and appeal.

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noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing 1 or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual under this subdivision is only eligible to receive assisted outpatient treatment under section 433 or 469a.

(2) An individual whose mental processes have been weakened or impaired by a dementia, an individual with a primary diagnosis of epilepsy, or an individual with alcoholism or other drug dependence is not a person requiring treatment under this chapter unless the individual also meets the criteria specified in subsection (1). An individual described in this subsection may be hospitalized under the informal or formal voluntary hospitalization provisions of this chapter if he or she is considered clinically suitable for hospitalization by the hospital director.

MCL 330.1401

Department clinician [REDACTED] testified that the Appellant presented for an in-person assessment on [REDACTED]. This was the day after a stressful reporting to [REDACTED] reviewers in [REDACTED] that she was having thoughts of self harm and frustration with her lack of progress.

He said she presented with ample evidence of self care, a calm mood, fully oriented with no observable signs of distress. The Appellant said that she was on medication and that it was helping her.

The Appellant testified that she went to [REDACTED] CMH to get "a clearance" so she could remain at [REDACTED] in [REDACTED]. She confirmed that she was not in crisis, but that "only good could come from the counseling afforded through partial hospitalization." She said she was scared by the thoughts she had – even having "been clean – of drugs for eight (8) months." The Appellant admitted that she was not in crisis and knew how to access emergency services should the need arise.

On review, the evidence supports the decision reached by the [REDACTED] CMHA on in-person assessment. The clinician reasonably recommended that the "Appellant return to her residential facility [in [REDACTED]] and continue her SA and MH treatment and to assess/adjust her medication needs." [Department's Exhibit A, Sub 5]

Because the CMH remains the entry point for mental health services in [REDACTED] the Appellant is free to seek those services whenever she wants – so long as she is not receiving duplicate services elsewhere. In this case, the evidence preponderates that her impairment, to

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the extent it remains, is mild. The Appellant does not require the extra-ordinary services of partial hospitalization.

The Appellant has not preponderated her burden of proof.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that the Appellant was not eligible for services through the [REDACTED] CMHA.

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: 6/16/2011

***** 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.