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:

[redacted],

Docket No. 2011-38944 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted] appeared by telephone without representation. [redacted], Fair Hearings Officer, represented the Department. Her witness was not available.

There were no requests for adjournment.

PRELIMINARY MATTER

The Department's request for a dismissal of the Appellant's appeal for the absence of a witness was denied by the ALJ.

ISSUE

Did the Department properly reduce the Appellant's number of Skill Building Assistance (SBA) services from four (4) to three (3) days?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a [redacted]-year-old Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant receives outpatient mental health services from the CMH via its subcontractors [redacted] and [redacted]. Department's Exhibit A, pp. 5, 11-15.

3. The Appellant is afflicted with Bipolar II [hypomanic] Disorder, thyroid, stomach, constipation "problems" and "chronic back pain." Department's Exhibit A, pp. 8 and 12.

4. The Appellant, in [redacted], was referred to SBA services with the goals of establishing order in her room and dealing with panic attacks as well as the goal of obtaining and maintaining employment/volunteer position – to include "[weekly] …two days of training." Department's Exhibit A, p. 6.

5. Following review on [redacted], it was determined that the Appellant was stable and that her needs could be met in a less restrictive environment. *See* Testimony of [redacted].[1]

6. The Appellant's SBA program was next reduced from four (4) days a week to three (3) days a week. *See* Testimony of [redacted].[2]

7. On [redacted], the Appellant was advised of her reduction in service by way of advance action notice to be effective [redacted]. Department's Exhibit A, p. 1.

8. The instant request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health 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

[1] This conclusion was not stated in the concurrent review. *See* Department's Exhibit A, pp. 11-15.
[2] Reduction of SBA was not referenced in the concurrent review. *See* Department's Exhibit A, pp. 11-15.

> 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 waiver. Detroit-Wayne County Community Mental Health Authority (CMH) contracts with the Michigan Department of Community Health to provide specialty mental health services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver. Gateway Community Heath and Lincoln Behavior Services function as subcontractors of DWCCMHA for the provision of services and supports for persons afflicted with mental illness.

Medicaid beneficiaries are 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.

As a person afflicted with a serious mental illness the Appellant is entitled to receive services from the CMH. *See* Medicaid Provider Manual, (MPM) Mental Health [ ], Beneficiary Eligibility, §1.6, April 1, 2011, pp. 3, 4 and MCL 330.1100d(3).

However, the construction of those services and supports are not static, but rather subject to review by mental health professionals confirming that both a current functional impairment and a current medical necessity exist for receipt of those specialized services and supports.

Medical Necessity is defined as:

> Determination that a specific service is medically (clinically) appropriate, necessary to meet needs, consistent with the person's diagnosis, symptomatology and functional impairments, is the most

cost-effective option in the least restrictive environment, and is consistent with clinical standards of care. Medical necessity of a service shall be documented in the individual plan of services.

MPM, *Supra* §1.7, p. 5

* * *

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.

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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. (Emphasis supplied)

MPM, *Supra*, §§2.5 – 2.5.D, pages 12-14.

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Skill Building Assistance under the MPM is defined as:

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support. Skill-building assistance may be provided in the beneficiary's residence or in community settings.

Documentation must be maintained by the PIHP that the beneficiary is not currently eligible for sheltered work services provided by Michigan Rehabilitation Services (MRS). Information must be updated when the beneficiary's MRS eligibility conditions change.

Coverage includes:

- Out-of-home adaptive skills training: Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and supports services incidental to the provision of that assistance, including:

● Aides helping the beneficiary with his mobility, transferring, and personal hygiene functions at the various sites where adaptive skills training is provided in the community.

● When necessary, helping the person to engage in the adaptive skills training activities (e.g., interpreting). Services must be furnished on a regularly scheduled basis (several hours a day, one or more days a week) as determined in the individual plan of services and should be coordinated with any physical, occupational, or speech therapies listed in the plan of supports and services. Services may serve to reinforce skills or lessons taught in school, therapy, or other settings.

● Work preparatory services are aimed at preparing a beneficiary for paid or unpaid employment, but are not job task-oriented. They include teaching such concepts as attendance, task completion, problem solving, and safety. Work preparatory services are provided to people not able to join the general workforce, or are unable to participate in a transitional sheltered workshop within one year (excluding supported employment programs).

Activities included in these services are directed primarily at reaching habilitative goals (e.g., improving attention span and motor skills), not at teaching specific job skills. These services must be reflected in the beneficiary's person-centered plan and directed to habilitative or rehabilitative objectives rather than employment objectives.

● Transportation from the beneficiary's place of residence to the skill building assistance training, between skills training sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

● Services that would otherwise be available to the beneficiary.

MPM, §17.3.K, Skill-Building Assistance,
Mental Health [ ], pp. 117, 118

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The Department witness testified that the Appellant had achieved "stability" and that her goals could be met with a less intensive level of service. The witness relied on page 14 of her Exhibit [the concurrent review] where it was reported that the Appellant had improvement with short term memory and an improved ability to manipulate objects.

The Appellant testified that her depression increases in relation to the number of days she does not work. "The more days I work the better," she said with regard to her SBA program. The Appellant said that the decision to reduce her hours was driven solely by monetary reasons. '[redacted] is not being forthright" in its reporting, she said. The Appellant testified that she was required to leave the "front office" for unknown reasons.

On review, the Department's evidence did not support the reduction in service as nothing in their review addressed the goals formulated in the Appellant's plan of care. One of the Appellant's goals was to be addressed with the aforementioned "front office training at two days a week." That service was eliminated apparently with less than two months of program participation. As for her remaining goal of addressing clutter – the fact that she better manipulates objects is far removed from achieving a stated goal of "…maintain neat, clean, orderly living space…" [*See* goals, Department's Exhibit A, at page 6]

The Department's Exhibit was flawed as it appeared to be a truncated document addressing earlier program success or failure as evaluated by a clinician who was not called to testify [redacted]. The only evidence with regard to medication was a listing of current medications – there was no reference to the success or failure of her medication goal – other than to observe that she would be at risk for relapse owing to memory problems. [*See* goals, Department's Exhibit A, pages 7 and 8] This neither addressed the Appellant's goal of maintaining stable health and "taking my medicine" nor did it explain the Department's service reduction in terms of lessened medical necessity; its scope, duration or intensity.

Accordingly, how the Appellant's individualized goals were met under the relevant standard [MPM 17.3.K] were not established other than to note "improvement" - a conclusion that the Appellant flatly denied in her proofs.

The concurrent review also documented that the Appellant was scheduled for five (5) days of SBA so it is impossible for the ALJ to discern what the training standard is – or was.[3] The confusion posed by the Department's Exhibit strongly supports the Appellant's testimony that she requires four (4) days of skill building assistance.

The ALJ is limited by the evidence contained in the record when reaching his decision. Based on this record I conclude that the decision to reduce skill building service was not supported by the concurrent review as stated by the Department witness and that the resulting reduction in days of service was reached in error without consideration or documentation of lessened medical necessity.

[3] Department's Exhibit A, p. 14; there was also reference to "2 days and 4 days." *See* Department's Exhibit A - throughout.

The Appellant preponderated her burden of proof that the Department erred in reducing the number of Skill Building Assistance service days on concurrent review conducted on [redacted].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly reduced the Appellant's Skill Building Services.

IT IS THEREFORE ORDERED that

The Department's decision is REVERSED.

_____
Dale Malewska
Administrative Law Judge
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 10/5/2011

***** 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.