

**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

Docket No. 2011-48454 CMH
Case No. 67412188

██████████,

Appellant

_____ /

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 ██████████. ██████████, Appellant's mother/guardian appeared and provided testimony on behalf of the Appellant.

██████████, Fair Hearing Officer, appeared and testified for the Department's agent, ██████████ County Community Mental Health. Dr. ██████████, M.D., Psychiatrist with ██████████ Community Health appeared as witness for ██████████ County Community Mental Health Agency.

ISSUE

Did the CMH properly reduce the Appellant's Medicaid covered skill-building services from five days to three days per week in accordance with policy?

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 ██████ year-old Medicaid beneficiary (DOB ██████████). The Appellant has been diagnosed with schizophrenia-paranoid type and mild mental retardation from birth. (Exhibit 2, pp. 8-9, 18-19).
2. ██████████ County Community Mental Health Agency is a Community Mental Health Services Program (CMH).
3. Appellant receives services at ██████████ Community Health Center (██████ HC) and ██████████ Community Health is Appellant's assigned MCPN. (Exhibit 1).

4. [REDACTED] County Community Mental Health Agency contracts with [REDACTED] Community Health to provide oversight for the service provider [REDACTED] Community Health Center. Gateway in turn contracts [REDACTED] HC to provide Medicaid covered mental health services including skill-building services.
5. On [REDACTED], an Individual Plan of Service (IPOS) for Appellant running through [REDACTED], the [REDACTED] HC Treatment Plan, was developed and signed by the parties including Appellant's mother/guardian. (Exhibit 2, pp.12-19).
6. The treatment plan authorized Appellant to receive skill-building services daily for one year. (Exhibit 2, p. 13). Accordingly, Appellant had been receiving skill building services through Gateway Community Health at the level of five days per week. (Exhibit 2, p. 8).
7. On [REDACTED], CMH sent the Appellant written advance notice that the CMH skill building services would be reduced from five to three days per week, effective [REDACTED]. The reason given was "behavioral symptoms have decreased to a level where there is no continued need for skill building services at his current level . . ." (Exhibit 2, pp. 1-5).
8. The Michigan Administrative Hearing System received Appellant's request for hearing on [REDACTED]. (Exhibit 3).

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. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

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. The CMH witness Dr. ██████████ testified during the hearing and introduced credible evidence that it terminated Appellant's Gateway skill-building service because he was no longer using the Medicaid covered service to achieve the purpose for which it was authorized. Dr. ██████████ described the purpose for authorization, as detailed in his PCP, as habilitative to increase Appellant's interpersonal skills and employment related skills to achieve economic self-sufficiency in a less restrictive setting.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, July 1, 2011, Pages 117 and 118*, states:

17.3.K. SKILL-BUILDING ASSISTANCE

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.

CMH witness [REDACTED] testified that [REDACTED] Community Health ([REDACTED]) is a Managed Comprehensive Provider Network (MCPN) that contracts with the CMH to provide oversight for the service provider [REDACTED] Community Health Center ([REDACTED] HC) where Appellant's skill building services are held. [REDACTED] stated the skill building services are Medicaid covered services. [REDACTED] stated Appellant was also receiving other Medicaid covered services, including medication management, group therapy, and case management services.

Dr. [REDACTED], a psychiatrist who works for [REDACTED] testified that [REDACTED] contracts with [REDACTED] HC to provide mental health services including skill building services. Dr. [REDACTED] stated Appellant has been in skill building services since [REDACTED]. Skill building services are intended to improve the client's abilities to function in society with getting an education or finding and holding a job.

Dr. [REDACTED] reviewed the IPOS and treatment plan from [REDACTED] HC. The review showed Appellant cannot read or write, and has mild mental retardation. Further, that Appellant has met all the goals that he could meet from the skill building program. Appellant's behavior was stable and he was able to take his medications as prescribed. Dr. [REDACTED] stated Appellant had reached his baseline level of functionality. Accordingly, at this time [REDACTED] HC is only providing a "structured environment" for Appellant.

Dr. [REDACTED] stated that having gone as far as he could with the skill building services, Appellant needs to be transitioned to another structured environment that [REDACTED] HC could provide for him, such as Club House, or other job related programs. Dr. [REDACTED] stated the skill building was being reduced from five days to three days to allow for a smooth transition for moving Appellant to another program that would provide a "structured environment" for him.

The ██████████ testified she was Appellant's adoptive mother and legal guardian. Ms. ██████ testified Appellant is now ██████ years-old. She stated that Appellant still has problems, he is up at night and he is still pulling off his skin, but she just wasn't sharing his problems with Appellant's counselors. Ms. ██████ says she faults herself because she signed off on the IPOS and the goals stated in the plan without reading it.

Ms. ██████ does not believe the evaluation contained in the exhibits presented for the hearing accurately portray the Appellant. Ms. ██████ said Appellant's mental status has changed and she believes he still needs an organized program on a daily basis. Ms. ██████ said she should have been involved with Appellant's psychiatrist concerning his mental issues. Ms. ██████ stated that Appellant still needs daily counseling with his case manager and a controlled environment.

The Appellant bears the burden of proving that he meets the medical necessity criteria to continue Medicaid-covered skill-building services at the higher level of five days per week. The CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building services five days per week. Dr. ██████████, the psychiatrist who testified on behalf of the department stated that Appellant has gone as far as he can go with the skill building services. Appellant is now only being held in a "structured environment" and needs to be transitioned to another program that can provide such a structured environment.

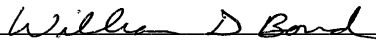
Reducing the skill building services to three days a week will provide an appropriate level of services to allow Appellant to be transitioned into another program which will meet his current needs. The evidence shows that Appellant's behavioral symptoms have decreased to a level where there is no continued need for skill building services. The CMH has acted appropriately in reducing the services to three days per week, which is sufficient to allow for transitioning the Appellant to a new program that will provide the "structured environment" he currently needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH's reduction of Appellant's Medicaid covered skill-building service from five days per week down to three days per week was in accordance to policy.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.



William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/7/2011

***** 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.