

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF

Docket No. 2011-52459 CMH
Case No. 16327786

██████████,

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 ██████████. The Appellant Antoine Watkins was present and provided testimony in his own behalf.

Ms. ██████████, Fair Hearings Officer, represented the ██████████ County Community Mental Health Agency (Agency). Dr. ██████████ appeared as a witness for the Agency.

ISSUE

Was the CMH reduction of the Appellant's Medicaid covered skill-building service in accordance to 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 ██████████). (Exhibit #1 & Testimony). The Appellant is diagnosed with bipolar I disorder, most recent episode depressed, moderate, and nondependent alcohol abuse in remission. (Exhibit 3, p 4).
2. ██████████ County Community Mental Health contracts with ██████████ Community Health (██████████) who is Appellant's Managed Comprehensive Provider Network (MCPN) to manage the services that the CMH authorizes. ██████████ contracts with Community Care Services (CCS) to provide Medicaid services to eligible beneficiaries. CCS referred Appellant to the Step Program for skill-building services. Along with the skill building services, Appellant is receiving additional Medicaid covered services including medical

management, individual therapy, and case management services. (Testimony).

3. The Appellant lives with his sister in [REDACTED]. (Exhibit 3, p. 4).
4. The Appellant has been receiving skill building services at the rate of five days per week through the Step Program since [REDACTED]. (Exhibit 3, p. 8, Exhibit 4, p. 14, and Testimony).
5. On [REDACTED], a review of Appellant's skill building services was conducted. (Exhibit 4, pp. 14-17).
6. As a result of the review, on [REDACTED], Gateway sent the Appellant written advance notice that his CMH skill building services would be reduced from five days per week to three days per week, effective [REDACTED]. (Exhibit 2, pp. 1-3). The reason given was, "The consumer appears able to remain stable with a less intensive level of services including routine outpatient care, physician-prescribed medications as needed, community based support, and in district special educational programming as needed. The CMH is in agreement with this reduction. (Exhibit 1 and Exhibit 2, p. 1).
7. The Appellant's request for hearing was received by MAHS on [REDACTED]. The Appellant contested the reduction because, "I would like to work 5 days per week." (Exhibit 6).

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. [REDACTED], a psychiatrist with Gateway, stated that the purpose of the Medicaid covered skill building services was to provide job training skills to get the Appellant ready to enter the work place. Dr. [REDACTED] stated that the Appellant has accomplished those goals. Dr. [REDACTED] further pointed out that the skills building program is not to be considered a full-time job, but rather is a preparation step towards further employment.

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

17.3.K. SKILL-BUILDING ASSISTANCE

Skill-building assistance consists of activities 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, 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.

The CMH witness Dr. [REDACTED], a psychiatrist with [REDACTED], testified during the hearing that Appellant has been in skill building services since [REDACTED]. He has had no hospitalizations and was able to maintain his independence in the community. Dr. [REDACTED] referenced Exhibit 4, p. 17 wherein it states that the Appellant has demonstrated the cognitive ability and emotional stability to progress beyond a daily skill building program by improved coping skills, improved anger management, and improved ability to work with others. Dr. [REDACTED] stated that Appellant has improved clinically and it is time to transition him to another work program such as the Michigan Rehabilitation Services (MRS).

Dr. [REDACTED] stated that the purpose of the Medicaid covered skill building services was to provide job training skills to get the Appellant ready to enter the work place. Dr. [REDACTED] stated that the Appellant has accomplished those goals. He further stated the skill building services were not meant to provide the Appellant with a full-time job.

Dr. [REDACTED] stated Appellant's skill building services were being reduced to three days per week to allow for him to be transitioned out of the program. He would probably be at three days a week level for three months and then further reductions would occur. In the mean time, Appellant would retain his other Medicaid covered services through CCS which would assist Appellant in transitioning to MRS or another job readiness program.

The Appellant testified that he wanted to keep the skill building services five days per week because with the bad economy it is hard to find employment. Appellant stated that cutting him back to three days per week cuts his pay a lot, and it is hard now just working five days per week. He stated it would affect his life style if he was reduced to only three days per week. Appellant's own testimony supports the conclusion that he is

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no longer using skill building services for its intended purpose and that his needs can be met through another less intensive program.

Appellant is still approved for three days per week of skill building services. 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 has improved clinically to a point 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 employment readiness training and support that he currently needs.

The Appellant bears the burden of proving that he met the medical necessity criteria to have the additional Medicaid-covered skill-building services he has requested. The CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building services at the level of five days per week.

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 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: 10/21/2011

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***** 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.