

**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. 2012-34470 CMH
Case No. [REDACTED]**

[REDACTED],
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 [REDACTED]. Appellant, [REDACTED] appeared and testified on her own behalf. [REDACTED], Home Provider; [REDACTED], Director, [REDACTED], Vocational Rehabilitation Specialist; and [REDACTED], Workforce Development Specialist, appeared as witnesses for the Appellant.

[REDACTED], Fair Hearings Officer, represented the [REDACTED] (CMH). [REDACTED] appeared as a witness for the CMH.

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 [REDACTED] year-old Medicaid beneficiary, born [REDACTED]. (Exhibit 2, p 24) The Appellant is currently receiving services through [REDACTED] and [REDACTED] is her assigned MCPN. (Exhibit 1)
2. The Appellant is diagnosed with schizophrenia. (Exhibit 2, p 32; Testimony).
3. [REDACTED] contracts with [REDACTED] to provide skill-building services to Medicaid clients. (Exhibit 2)

4. Appellant currently resides in an Adult Foster Care (AFC) home. (Exhibit 2, p 24; Testimony)
5. On [REDACTED], a Person-Centered Plan (PCP) for the Appellant was developed and signed. (Exhibit 2, pp 24-34)
6. Under the PCP, Appellant has been receiving skill building services through [REDACTED] Industries since [REDACTED] (Exhibit 2, Testimony).
7. In December 2011, a review of Appellant's skill building services was conducted. (Exhibit 2, pp 6-11)
8. As a result of the review, on [REDACTED], CMH sent the Appellant written advance notice that her CMH skill building services would be reduced from 3 days per week to 2 day per week, effective [REDACTED]. (Exhibit 2, pp 1-3). The reason given was, "The patient continues to improve socialization skills with the public. The patient from time to time falls asleep and requires prompting to keep motivated and awake. The patient also struggles with the amount of time she performs her janitorial duties due to health (weight) and needs a break every 10 minutes. Per the review, the patient has not demonstrated a cognitive ability and emotional improvement to progress beyond a daily skill building program. Patient requires encouragement and prompting. Lack of focus by the client to concentrate on assigned community outings. The patient has been receiving skill building services per the review since [REDACTED]. The consumer has made progress beyond the level of skill building and is ready for a less intensive service such as a club house. Consumer can attend while transitioning." (Exhibit 2, p 1). The notice contained Appellant's rights to a Medicaid Fair Hearing.
9. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. The Appellant contested the reduction, stating, "I would like to request a hearing because I want to keep my three days a week. I get bored at home and stay in bed when I don't have anything to do. I enjoy the program and my job." (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 *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.

CMH witness [REDACTED] testified that Appellant had been able to remain stable in the program and that she had reached the level of skills that the program was designed to deliver to her. [REDACTED] noted that Appellant has been receiving skill building services since [REDACTED]. [REDACTED] explained that skill building services are not designed to be long-term work programs for participants, but rather a transitional program to prepare participants for outside work, or to provide work preparatory services for those who cannot join the workforce.

[REDACTED], Appellant's home provider, testified that Appellant lives in her Adult Foster Care Home. [REDACTED] testified that skill building is what motivates Appellant and that if she does not go to skill building she sleeps, over-eats, and has no reason to leave the house. [REDACTED] testified that Appellant becomes down when she does not go to skill building because it is the only thing Appellant looks forward to. [REDACTED] also testified that Appellant has health conditions that require monitoring and that drop-in programs do not provide such monitoring. [REDACTED] also testified that drop-in programs are for persons who can be independent and that Appellant is not ready to be independent.

[REDACTED], Vocational Rehabilitation Specialist at Goodwill Industries, testified that the skill building program is one of the rare programs that actually does what it promises. [REDACTED] testified that he has talked to people, like the Appellant, whose skill building services have been reduced and when he asks them what they are doing when not in skill building they say "nothing". [REDACTED] indicated that when persons, such as Appellant, are cut from the skill building program, all progress they have made is lost. [REDACTED] concluded that Appellant should not have to suffer because of financial difficulties at CMH. [REDACTED] also testified that to say Appellant has graduated from skill building to another phase is unfounded because the next phase, work readiness, does not support her needs. Basically, according to [REDACTED], Appellant would be placed in an environment with no foundation that would be akin to adult day care.

[REDACTED], Director, [REDACTED], [REDACTED], testified that when Appellant began with their program they had to do a lot to get her motivated to do anything. [REDACTED] testified that they began Appellant in their micro-enterprise program, where Appellant was taught how to manage money, taught about nutrition, and how to serve the public. [REDACTED] testified that it was difficult to get Appellant to the point where she is now because of her disability and that if her skill building services are cut it will be a set back for Appellant and make it difficult for Appellant to move on. [REDACTED] also pointed out

that with the economy the way it is now it would be next to impossible for Appellant to find work elsewhere because she would be competing for jobs with persons without disabilities. [REDACTED] also testified that Appellant has sleep apnea, which would put her at risk in a more independent program.

[REDACTED], Workforce Development Specialist, testified that she took over Appellant's case recently and has had a chance to review Appellant's file and interact with her. [REDACTED] testified that she noticed from Appellant's file that she did not speak up for herself in the beginning, but that now she does. [REDACTED] testified that Appellant now interacts with her peers in the skill building program and that Appellant is next in line for the work ready initiative, which will help her to become employed in the community. [REDACTED] also testified that Appellant's goal is to work outside the skill building program but she would need more intense work readiness training before she would be ready to become employed in the community.

Appellant testified that she would be doing nothing if it were not for the skill building program. She testified that she likes going to the program and would like to continue going five days per week.

[REDACTED] commended [REDACTED] for the good work that they have done with Appellant, which is evident from the progress she has made. [REDACTED] reiterated, however, that the skill building program is not intended to be a permanent job for people and that CMH has been asking Goodwill to transition Appellant into another program for the past two years, but all they have done has been to continue to ask for more skill building for Appellant. [REDACTED] also indicated that the decision in this case was not based on financial considerations, as argued by Appellant's witnesses, but rather on the clinical information received from the provider, [REDACTED], who receives their information from [REDACTED].

The Appellant bears the burden of proving that she met the medical necessity criteria to have Medicaid-covered skill-building services for 3 days per week. As indicated above, "Skill-building assistance consists of activities that assist a beneficiary to increase his (or her) 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." Here, it is clear from the testimony and evidence that Appellant has met her goals in the program, is able to perform the functions assigned to her at skill building, and is ready to transition to a less intensive service, such as Clubhouse. Appellant's stated reasons for wanting to remain in the program, i.e. because she likes it and otherwise would be doing nothing, are not appropriate uses of skill building.

It is also clear from the testimony of Appellant's witnesses that they are arguing as much for all recipients of skill building services through their organization as they are for Appellant's individual need. However, if CMH has decided to review recipients of Medicaid covered skill building services in their area, and to reduce skill building where it determines such reductions to be appropriate, such a decision is beyond the scope of the instant hearing. All the undersigned can deal with is whether or not Appellant meets the medical necessity criteria for skill building services three days per week. As indicated above, the evidence does not support

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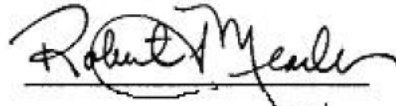
a finding that Appellant requires skill building three days per week. As such, the CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building services for 3 days per week.

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 from 3 days per week to 2 days per week effective [REDACTED] was in accordance to policy.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/1082012

***** 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.