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.** 2012-54875 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 Appellant's Authorized Hearing Representative, appeared and testified on Appellant's behalf. Appellant did not appear at the hearing.

Fair Hearing Officer, represented the Washtenaw County Health Organization (WCHO or CMH) . Health Services Supervisor, appeared as a witness for the CMH.

ISSUE

Did CMH properly deny authorization for individual therapy for Appellant?

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 Medicaid beneficiary with a diagnosis of Borderline Personality Disorder and Bi-Polar Disorder. (Exhibit 1, p 3; Testimony)

2. Petitioner began receiving dialectical behavioral therapy (DBT) on The DBT therapy program included both group and individual therapy components. Appellant graduated from the DBT program on (Exhibit 1, pp 3-4; Testimony).

3. Appellant requested continued individual therapy, which was denied. Appellant was given the option of participating in a graduate DBT program, and Appellant began participating in that program on . (Exhibit 1, pp 1-2; Exhibit 2; Testimony)

4. On [redacted] CMH sent an Adequate Action Notice to the Appellant indicating that her request for individual therapy was denied. The Notice included rights to a Medicaid fair hearing. (Exhibit 1, pp 1-2).

5. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [redacted] (Exhibit 2).

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 waiver. Lifeways 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.

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.* Medical necessity is defined by the Medicaid Provider Manual as follows:

> **2.5 MEDICAL NECESSITY CRITERIA**
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> The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.
>
> **2.5.A. MEDICAL NECESSITY CRITERIA**
>
> 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.
>
> *MPM, Mental Health and Substance Abuse Section, July 1, 2012, Page 12-13*

Individual/Group Therapy services are also defined in the Medicaid Provider Manual:

> **3.11 INDIVIDUAL/GROUP THERAPY**
>
> Treatment activity designed to reduce maladaptive behaviors, maximize behavioral self-control, or restore normalized psychological functioning, reality orientation, remotivation, and emotional adjustment, thus enabling improved functioning and more appropriate interpersonal and social relationships. Evidence based practices such as integrated dual disorder treatment for co-occurring disorders (IDDT/COD) and dialectical behavior therapy (DBT) are included in this coverage. Individual/group therapy is performed by a mental health professional within their scope of practice or a limited licensed master's social worker supervised by a full licensed master's social worker.

MPM, Mental Health and Substance Abuse Section, July 1, 2012, Page 18

Fair Hearing Officer, testified that Appellant had been receiving services through Community Support and Treatment Services (CSTS), an agent of WCHO, for some time. indicated that Appellant completed over one year of DBT therapy and that the CMH determined that further therapy was not medically necessary. explained that evidence indicates that there is no further efficacy after one year of DBT therapy, and that Appellant had graduated from the DBT program having met all of her goals. indicated that Appellant was referred to outside agencies for further individual therapy if she so desired and also offered that Appellant could participate in a DBT program for graduates of the one-year DBT program. Appellant is currently participating in the graduate program.

Health Services Supervisor, testified that Appellant was in the DBT program from until indicated that Appellant had the same therapist for this entire period and that evidence shows that there is no benefit to DBT therapy after one year. also testified that she spoke to Appellant when Appellant requested individual therapy to find out what areas Appellant needed help in and Appellant informed that she needed help in the areas of budgeting and case management – areas not related to individual therapy.

Appellant's Authorized Hearing Representative, testified that Appellant continues to have problems managing her emotions. indicated that Appellant continues to experience anger and angry outbursts. testified that Appellant was recently granted social security benefits and that the Administrative Law Judge who made that decision noted that Appellant did not make much progress in the DBT program. testified that Appellant had to quit a job working for her mother because of she could not control her anger and inappropriate behavior.

Per request, the record was held open until 5:00 p.m. on so that she could submit letters from individuals on Appellant's behalf. No letters were received.

Based on the evidence presented, CMH did properly deny Appellant individual therapy services. As indicated above, all services must be medically necessary, meaning those services are, "Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his/her goals of community inclusion and participation, independence, recovery, or productivity." Here, Appellant completed a one year DBT program and met all of her goals in the program. Evidence was also presented that there is no benefit to continued DBT after one year. The CMH also offered additional services, such as the participation in a graduate DBT program, to address Appellant's concerns regarding the denial of individual therapy services. Appellant is participating in the graduate DBT program. Appellant was also referred to other community agencies where she could receive individual therapy at reduced or no cost to herself.

The burden is on the Appellant to prove by a preponderance of evidence that individual therapy is medically necessary. As indicated above, Appellant did not meet her burden.

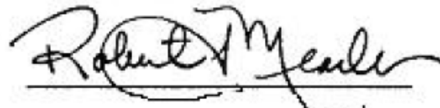
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

> The CMH properly denied authorization for individual therapy for Appellant.

IT IS THEREFORE ORDERED that:

> The CMH's decision is AFFIRMED.



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

cc:

Date Mailed: 7/25/2012

***** 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.