

**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. 2012-13606 CMH
Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing began on [REDACTED]. The hearing was subsequently continued on [REDACTED] and [REDACTED]. [REDACTED] appeared and testified on behalf of Appellant. [REDACTED], Appellant's mother and guardian, also testified as a witness for Appellant. [REDACTED], Fair Hearings Officer, appeared on behalf of the [REDACTED] (CMH). [REDACTED], Supervisor, and [REDACTED], Mental Health Therapist, also appeared as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's requests for individual therapy and Community Living Supports (CLS)?

FINDINGS OF FACT

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

1. Appellant is a [REDACTED] year-old man who has been diagnosed with bipolar disorder, ADHD, anxiety disorder NOS, social phobia, high reactance, and obesity. (Exhibit A, page 5 of 8).
2. The CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.
3. Appellant applied for services through the CMH, but, after an assessment conducted on [REDACTED], his request was denied. (Testimony of [REDACTED])
4. A second assessment was completed on [REDACTED], but Appellant's

request for services was again denied. (Testimony of ██████).

5. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing (Exhibit A) and a hearing was scheduled for ██████████.
6. While preparing for that hearing, the CMH's representative determined that services should have been initiated. (Testimony of ██████).
7. On ██████████, the CMH sent MAHS a letter stating that services had now been approved and that Appellant's first appointment was scheduled for ██████████. (Exhibit C).
8. The hearing in this case began on ██████████. During that hearing, it was agreed by the parties and this Administrative Law Judge that the hearing would continued at a later date after Appellant's services were finalized. A continued hearing was set for ██████████. (Exhibit D).
9. On ██████████, the CMH developed a Person/Family Centered Treatment Plan for Appellant. (Exhibit F).
10. The hearing in this case was recommenced on ██████████. During the hearing, it became clear that there was still some dispute regarding what services were being provided and when. Both parties did agree that Community Living Supports (CLS) should be added to the approved services. The parties and this Administrative Law Judge also agreed that the hearing should be continued at a later date. Another continued hearing was set for ██████████. (Exhibit G).
11. The CMH subsequently developed a Revised Person/Family Centered Treatment Plan for Appellant. One new goal and the new service of housing assistance were added. (Exhibit H).
12. The hearing in this case was recommenced on ██████████. During the hearing, Appellant's representative indicated that he still disputes when some services are being provided and that he requests that the services of individual therapy and CLS be specifically approved. The CMH's representative asserted that, while there have been some difficulties in providing Appellant's services due to his living situation, the appropriate services have been approved and are being provided. (Testimony of ██████; Testimony of ██████).

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

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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 C.F.R. § 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 C.F.R. § 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...

(42 U.S.C. § 1396n(b))

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) and

1915(c) Medicaid Managed Specialty Services and Support program waiver.

As discussed above, there are unresolved issues in this case and Appellant's representative requests that the services of individual therapy and CLS be specifically approved by the CMH. The CMH's representative asserted that, while there have been some difficulties in providing Appellant's services due to his living situation, the appropriate services have been approved and are being provided. For the reasons discussed below, this Administrative Law Judge finds in favor of Appellant.

Individual therapy is a covered service that the CMH can provide pursuant to the Medicaid Provider Manual (MPM):

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,
January 1, 2012, page 18)

Here, the CMH does not dispute that therapy is medically necessary for Appellant and should be authorized. Rather, the CMH asserts that such therapy has already been approved as it is part of the targeted case management services authorized for Appellant. However, the person-centered plan's authorization of targeted care management does not specifically mention therapy. Similarly, while the expansive description of targeted case management in the MPM could conceivably include therapy, therapy is not specifically discussed. (MPM, Mental Health and Substance Abuse Section, January 1, 2012, pages 69-72). Given the failure to specifically authorize individual therapy and the broad definition of targeted case management, as well as the agreement that such therapy is medically necessary, this Administrative Law Judge finds that the CMH's decision must be reversed and that individual therapy must be specifically approved for Appellant.

The MPM also addresses the covered service of CLS:

17.3.B. COMMUNITY LIVING SUPPORTS

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

- Assisting (that exceeds state plan for adults), prompting, reminding, cueing, observing, guiding and/or training in the following activities:
 - > meal preparation
 - > laundry
 - > routine, seasonal, and heavy household care and maintenance
 - > activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
 - > shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or

supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:
 - > money management
 - > non-medical care (not requiring nurse or physician intervention)
 - > socialization and relationship building
 - > transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
 - > participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
 - > attendance at medical appointments
 - > acquiring or procuring goods, other than those listed under shopping, and non-medical services
- Reminding, observing and/or monitoring of medication administration
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state

plan coverage Personal Care in Specialized Residential Settings. Transportation to medical appointments is covered by Medicaid through DHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the beneficiary receiving community living supports.

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a DHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help.

Community Living Supports (CLS) provides support to a beneficiary younger than 18, and the family in the care of their child, while facilitating the child's independence and integration into the community. This service provides skill development related to activities of daily living, such as bathing, eating, dressing, personal hygiene, household chores and safety skills; and skill development to achieve or maintain mobility, sensory motor, communication, socialization and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the child. These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings, but are not intended to supplant services provided in school or other settings or to be provided when the child would typically be in school but for the parent's choice to home-school the child.

(MPM, Mental Health and Substance Abuse Section,
January 1, 2012, pages 108-109)

Here, the CMH does not dispute that CLS are medically necessary for Appellant and should be authorized. Rather, the CMH asserts that such services have already been approved as it is part of the services that must be provided by the group home Appellant is living in pursuant to the contract that group home made with the CMH. However, the record does not contain the contract between the CMH and the group home, and there is no evidence regarding what services they are providing on behalf of the CMH.

Moreover, Appellant is on the waiting list for another home and the CMH could not state what services the new home was contracted to provide. Given the failure to specifically authorize CLS and the questions surrounding the group homes, as well as the agreement that CLS is medically necessary, this Administrative Law Judge finds that the CMH's decision must be reversed and that CLS must be specifically approved for Appellant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly denied Appellant's requests for individual therapy and CLS hours.

IT IS THEREFORE ORDERED that:

The CMH's decision is REVERSED. The CMH must reevaluate Appellant and specifically authorize individual therapy and CLS hours.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[Redacted]

Date Mailed: 3/27/2012

***** 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.