

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

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IN THE MATTER OF

██████████,
Appellant

Docket No. 2011-29574 CMH
Case No. 27813983

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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 Thursday, ██████████. ██████████, Appellant's mother, appeared and testified on behalf of the Appellant. Appellant also appeared and provided testimony.

██████████, ██████████ Community Mental Health (CMH), Fair Hearing Officer, represented the CMH. (CMH or Department). ██████████, Supports Coordinator, ██████████, appeared as a witness for the Department.

ISSUE

Did CMH properly terminate Appellant's Supports Coordination and Supported Employment services?

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 whose date of birth is ██████████. (Exhibit E, p 1).
2. The Appellant is diagnosed with Asperger's Disorder, Depressive Disorder NOS, ADHD, R/O Dysthymic Disorder, and R/O Social Anxiety Disorder. Appellant is also diagnosed with Psychosocial Stressors: Related to Social Contact, Occupation and Primary Support System. His current GAF is 45. (Exhibit E, p 3).
3. ██████████ is the Community Mental Health Services Program in Kent County, Michigan. (CMH).

4. [REDACTED] contracts with [REDACTED] for Supports Coordination and Hope Developmental and Community Services (Hope) for Supported Employment.
5. Appellant began Supported Employment with [REDACTED] in [REDACTED] but was discharged due to several factors, including lacking appropriate social skills to secure a job, not making eye contact with interviewers and appearing unmotivated to find a job. Appellant then began Supported Employment services with [REDACTED] in [REDACTED]. At no time since [REDACTED] has Appellant been employed. (Exhibit E).
6. Appellant participated in a person-centered planning process on [REDACTED]. An individual plan of services was developed and included the Medicaid covered services of Supports and Service Coordination and Supported Employment. (Exhibit C, pp 1-7). The plan was extended on [REDACTED] and [REDACTED]. (Exhibit C, pp 8-9).
7. A Social Assessment was done in [REDACTED] by supports coordinator [REDACTED] and updated on [REDACTED] by the new supports coordinator, [REDACTED]. (Exhibit E).
8. Recommendations from the Social Assessment indicated that medically necessary services for Appellant included Supports and Service Coordination, Skill-Building Assistance, Enhanced Health Care services and Community Living Supports, but not Supported Employment. (Exhibit E, p 12). Appellant informed [REDACTED] that he was only interested in Supported Employment. (Exhibit E, p 13)
9. On [REDACTED], CMH sent the Appellant written advance notice that the Medicaid covered services of Supports and Service Coordination and Supported Employment would be terminated, effective [REDACTED]. (Exhibit D, pp 1-2). The reason given was "You have declined services that you are eligible for – Skill Building, Enhanced Health Care and Community Living Supports." (Exhibit D, p 2).
10. The Appellant's request for hearing was received by this Tribunal on [REDACTED]. The Appellant contested the termination, indicating in part, "Got new worker at [REDACTED], who after only one meeting, decided I was unemployable and dropped me from [REDACTED], which meant I can't work with Hope Network to find a job." (Exhibit 1).

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*. CMH witness [REDACTED] testified during the hearing and introduced credible evidence that Appellant's Supports and Service Coordination and Supported Employment services were terminated because Appellant declined the services that he was actually eligible for – Skill Building, Enhanced Health Care and Community Living Supports.

The *Medicaid Provider Manual, Mental Health/Substance Abuse, October 1, 2011, Pages 119 and 123*, 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.

17.3.L. SUPPORT AND SERVICE COORDINATION

Functions performed by a supports coordinator, supports coordinator assistant, services and supports broker, or otherwise designated representative of the PIHP that include assessing the need for support and service coordination, and assurance of the following:

- Planning and/or facilitating planning using person-centered principles
- Developing an individual plan of service using the person-centered planning process

- Linking to, coordinating with, follow-up of, advocacy with, and/or monitoring of Specialty Services and Supports and other community services/supports.
- Brokering of providers of services/supports
- Assistance with access to entitlements and/or legal representation
- Coordination with the Medicaid Health Plan, Medicaid fee-for-service, or other health care providers.

The role of the supports coordinator assistant is to perform the functions listed above, as they are needed, in lieu of a supports coordinator or case manager. A beneficiary would have only one of the three possible options: targeted case manager, supports coordinator, or supports coordinator assistant. When a supports coordinator assistant is used, a qualified supports coordinator or targeted case manager must supervise the assistant. The role and qualifications of the targeted case manager are described in the Targeted Case Management section of this chapter.

A services and supports broker is used to explore the availability of community services and supports, housing, and employment and then to make the necessary arrangement to link the beneficiary with those supports. The role of the supports coordinator or supports coordinator assistant when a services and supports broker is used is to perform the remainder of the functions listed above as they are needed, and to assure that brokering of providers of services and supports is performed.

Whenever services and supports brokers provide any of the supports coordination functions, it is expected that the beneficiary will also have a supports coordinator or case manager, or their assistant, employed by the PIHP or its provider network who assures that the other functions above are in place.

If a beneficiary has both a supports coordinator or supports coordinator assistant AND a services and supports broker, the individual plan of service must clearly identify the staff who is responsible for each function. The PIHP must assure that it is not paying for the supports coordinator (or supports coordinator assistant) and the services and supports broker to perform service brokering. Likewise, when a supports coordinator (or supports coordinator assistant) facilitates a person-centered planning meeting, it is expected that the PIHP would not "double count" the time of any services and supports broker who also attends. During its annual on-site visits, the MDCH will review individual plans of service to verify that there is no duplication of service provision when both a supports coordinator assistant and a services and supports broker are assigned supports coordination responsibilities in a beneficiary's plan of service.

Supports strategies will incorporate the principles of empowerment, community inclusion, health and safety assurances, and the use of natural supports. Supports coordinators will work closely with the beneficiary to assure his ongoing satisfaction with the process and outcomes of the supports, services, and available resources.

Supports coordination is reported only as a face-to-face contact with the beneficiary; however, the function includes not only the face-to-face contact but also related activities that assure:

- The desires and needs of the beneficiary are determined
- The supports and services desired and needed by the beneficiary are identified and implemented
- Housing and employment issues are addressed
- Social networks are developed
- Appointments and meetings are scheduled
- Person-centered planning is provided, and independent facilitation of person-centered planning is made available
- Natural and community supports are used
- The quality of the supports and services, as well as the health and safety of the beneficiary, are monitored
- Income/benefits are maximized
- Activities are documented
- Plans of supports/services are reviewed at such intervals as are indicated during planning

While supports coordination as part of the overall plan implementation and/or facilitation may include initiation of other coverage and/or short-term provision of supports, it shall not include direct delivery of ongoing day-to-day supports and/or training, or provision of other Medicaid services. Supports coordinators are prohibited from exercising the agency's authority to authorize or deny the provision of services. Supports coordination may not duplicate services that are the responsibility of another program.

The supports coordination functions to be performed and the frequency of face-to-face and other contacts are specified in the beneficiary's plan. The beneficiary's record must contain sufficient information to document the provision of supports coordination, including the nature of the service, the date, and the location of contacts, including whether the contacts were face-to-face. The frequency and scope of supports coordination contacts must take into consideration the health and safety needs of the individual.

Qualifications of Supports Coordinators	A minimum of a Bachelor's degree in a human services field and one year of experience working with people with developmental disabilities if
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	supporting that population; or a Bachelor's degree in a human services field and one year of experience with people with mental illness if supporting that population.
Qualifications of Supports Coordinator Assistants and Services and Independent Services and Supports Brokers	Minimum of a high school diploma and equivalent experience (i.e., possesses knowledge, skills and abilities similar to supports coordinator qualifications) and functions under the supervision of a qualified supports coordinator. Independent services and supports brokers must meet these qualifications and function under the guidance and oversight of a qualified supports coordinator or case manager.

17.3.M. SUPPORTED/INTEGRATED EMPLOYMENT SERVICES

Provide job development, initial and ongoing support services, and activities as identified in the individual plan of services that assist beneficiaries to obtain and maintain paid employment that would otherwise be unachievable without such supports. Support services are provided continuously, intermittently, or on a diminishing basis as needed throughout the period of employment. Capacity to intervene to provide assistance to the individual and/or employer in episodic occurrences of need is included in this service. Supported/ integrated employment must be provided in integrated work settings where the beneficiary works alongside people who do not have disabilities.

Coverage includes:

- Job development, job placement, job coaching, and long-term follow-along services required to maintain employment.
- Consumer-run businesses (e.g., vocational components of Fairweather Lodges, supported self-employment)
- Transportation provided from the beneficiary's place of residence to the site of the supported employment service, among the supported employment sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Employment preparation.
- Services otherwise available to the beneficiary under the Individuals with Disabilities Education Act (IDEA).

Case Name: [REDACTED]
Docket No. 2011-29574-CMH
Hearing Decision & Order

CMH witness [REDACTED] testified that Supported Employment services were no longer medically necessary for Appellant because Appellant had been in Supported Employment services for 2 years and had not found a job. [REDACTED] also testified that Appellant currently lacked appropriate social skills to secure a job, including failure to make eye contact with interviewers, and that Appellant appeared unmotivated to find a job. [REDACTED] testified that Skill Building services would be more appropriate for Appellant at this time, so that he could develop the skills to later find a job.

[REDACTED], Appellant's mother, testified that she understands that Appellant is a challenge to work with because he does not understand compromise. She also testified that he had tried Skill Building in the past and that they had treated Appellant as if he had a low IQ, even though he had obtained a 3.5 GPA in high school and had obtained an Associates Degree. She testified that Appellant felt like the Skill Building services were designed for people of low intelligence. [REDACTED] testified that it is very hard for Appellant to get to know people and that he will make better eye contact with people once he gets to know them and trusts them. According to [REDACTED], Appellant feels like people repeatedly fail him. She indicated that Appellant also has great difficulty with public transportation because he has panic attacks and that he is resistant to taking any psychotropic medications because he is worried about how the medications will make him feel.

Appellant testified that he would like to find a job so that he can make friends and have a normal life. Appellant also testified that he is willing to go to counseling but does not want to take any medications because those medications make him feel "weird". Appellant also testified that he would go along with Skill Building as long as he could still meet his job coach and have Supported Employment.

The Appellant bears the burden of proving that he met the medical necessity criteria to continue Medicaid-covered Supported Employment services. The CMH provided sufficient evidence that medical necessity no longer exists for Supported Employment services, but that medical necessity does exist for Supports and Service Coordination, Skill-Building Assistance, Enhanced Health Care services and Community Living Supports. Given that Appellant stated he is not interested in participating in the services for which he is eligible, the CMH properly terminated Appellant's Medicaid services pursuant to policy and medical necessity criteria.

Case Name: [REDACTED]
Docket No. 2011-29574-CMH
Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH's termination of Appellant's Medicaid covered services was in accordance to Medicaid policy.

IT IS THEREFORE ORDERED that

The Department's decision is **AFFIRMED**.



Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 11/23/2011

***** 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.