

**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. 2012-34857 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]; [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 13). The Appellant is currently receiving services through [REDACTED] and [REDACTED] is her assigned MCPN. (Exhibit 1)
2. The Appellant is diagnosed with schizoaffective disorder [depressive type], PTSD, dependent personality disorder, HTN, DM GERD, TB exposure and lack of socialization. (Exhibit 2, p 7, 13). Appellant is prescribed Fanapt, Cogentin, Wellbutrin 100 mg and Wellburtrin 150 mg. (Exhibit 2, p 6)

3. [REDACTED] contracts with [REDACTED] to provide services to Medicaid clients. (Exhibit 2).
4. Appellant currently resides in an Adult Foster Care (AFC) home. (Exhibit 2, p 13; Testimony)
5. On [REDACTED], a Person-Centered Plan (PCP) for the Appellant was developed and signed. (Exhibit 2, pp 13-20)
6. Under the PCP, Appellant has been receiving skill building services through Goodwill Industries since [REDACTED]. (Exhibit 2, Testimony).
7. In [REDACTED], 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]. The notice contained Appellant's rights to a Medicaid Fair Hearing. (Exhibit 2, pp 1-3). The reason given was:

The consumer has been receiving skill building services at [REDACTED] since [REDACTED]. Consumer's progress is as follows: Consumer delivers meals but only after several prompts from vocational techs. Consumer's vocational skills have increased however, only after several prompts from the vocational tech; she also needs constant redirecting to complete an activity. Consumer is very quiet and off to herself most times. She intermittently has conversations with herself often laughing quite loudly. She is then redirected to reality with conversation. Consumer is also working on making new friends. Consumer is participating in the work-readiness training. Previous review indicates that the consumer requires one on one job coaching daily. It appears the consumer has met the maximum benefit of the program. Clinical Care Coordinator spoke to [REDACTED], LBSW at [REDACTED] who is in agreement with the consumer being reduced to 2 days per week. [REDACTED] indicates that the consumer may be a candidate for the drop-in center and will make a referral. (Exhibit 2, p 1).

9. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. The Appellant contested the reduction, stating, '[REDACTED] is giving me some skills so that I can try to find a job with a janitorial company. Now [REDACTED] wants to take

that away from me. What good is it to learn these skills if it is just going to be taken away from me. First [REDACTED] kicked me down to 3 days, now they want to kick me out. [REDACTED] has been tak[ing me] out to different shopping malls to pick up job applications for work. I do not want to go to a drop in center and you can't make me go. I want to stay at [REDACTED] in my training." (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*.

As a person afflicted with a serious mental illness the Appellant is entitled to receive services from the CMH. See Medicaid Provider Manual, (MPM) Mental Health [], Beneficiary Eligibility, §1.6, April 1, 2011, pp. 3, 4 and MCL 330.1100d(3).

However, the construction of those services and supports are not static, but rather subject to review by mental health professionals confirming that both a current functional impairment and a current medical necessity exist for receipt of those specialized services and supports.

Medical Necessity is defined as:

Determination that a specific service is medically (clinically) appropriate, necessary to meet needs, consistent with the person's diagnosis, symptomatology and functional impairments, is the most cost-effective option in the least restrictive environment, and is consistent with clinical standards of care. Medical necessity of a service shall be documented in the individual plan of services.

MPM, *Supra* §1.7, p. 5

MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

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.

PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

Deny services that are:

- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
- experimental or investigational in nature; or
- for which there exists another appropriate, efficacious, less restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews,

centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. (Emphasis supplied)

MPM, *Supra*, §§2.5 – 2.5.D, pages 12-14.

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 it was first determined by clinical review in [REDACTED] that Appellant had met the level of improvement expected from the skill building program and, as such, no longer met the medical necessity criteria for skill building services. [REDACTED] indicated that the CMH attempted to reduce Appellant's skill building services from five days per week to three days per week at that time, however, after an internal appeal, it was decided that Appellant could remain at five days per week. [REDACTED] testified that in [REDACTED] clinical review again indicated that Appellant had met the level of improvement expected from the skill building program and her hours were again reduced from five days per week to three days per week. Appellant appealed, however, following a hearing, the administrative law judge upheld CMH's decision.

[REDACTED] testified that in [REDACTED], Appellant's treatment provider, [REDACTED] again determined that Appellant no longer met the medical necessity criteria for skill building services because she had met the level of improvement expected from the program. Appellant's skill building services were then reduced from three days per week to two days per week, with the idea that Appellant would eventually be transitioned completely out of the skill building program. [REDACTED] testified that CMH is trying to slowly transition Appellant to another program because they understand how an abrupt change can affect Appellant's quality of life. [REDACTED] testified that Appellant's desire to remain in skill building is more of a quality of life issue than a medical necessity issue.

[REDACTED], Director, [REDACTED] testified that she disagrees with [REDACTED] because Appellant's PCP indicates that she can participate in the skill building program until [REDACTED]. [REDACTED] also pointed out that [REDACTED] does not invite [REDACTED] to PCP meetings and she thinks that they should be involved. [REDACTED] argued that they have seen no documentation indicating that Appellant's condition has changed or improved to the extent that she would no longer qualify for skill building services.

[REDACTED], Home Provider, testified that she attends meetings with Appellant and [REDACTED] caseworkers and never have any of the caseworkers mentioned that Appellant's skill building services should be reduced. [REDACTED] testified that if they [REDACTED] are not saying that Appellant's skill building services should be reduced than where is the decision coming from?

[REDACTED], Workforce Development Specialist, testified that a drop in center is not going to prepare Appellant for anything, while [REDACTED] is preparing her to be a productive member of the community. [REDACTED] testified that [REDACTED] has improved Appellant's social and professional skills, but because of Appellant's diagnosis it is going to take longer than it would for others for Appellant to become self-sufficient. [REDACTED] indicated that Appellant does understand tasks assigned to her, but because she is at a lower functioning rate it is going to take longer for her to develop. [REDACTED] opined that if Appellant is removed from the skill building program she is going to digress from the progress she has made.

[REDACTED], Vocational Rehabilitation Specialist at [REDACTED], testified that he talks to Appellant on a daily basis and that Appellant is very stressed because she is worried about being transitioned out of the skill building program. [REDACTED] testified that Appellant's roommate has already been transitioned out of the skill building program and Appellant has seen the negative effect it has had on her. [REDACTED] opined that the decision to reduce Appellant's skill building services was not in Appellant's best interest and that no one was speaking up for persons in Appellant's situation.

Appellant testified that she enjoys herself at [REDACTED], that the program makes her ready to be more independent, and that she has a lot more to accomplish through the program. Appellant testified that she is not sure what she would do if she is no longer in the skill building program.

[REDACTED] testified that Appellant has a severe and persistent mental illness and that after five years in the skill building program, Appellant has received the maximum benefit the program has to offer, according to the clinicians at [REDACTED]. [REDACTED] indicated that while a drop in center may not pay Appellant a small amount of money for her services, as [REDACTED] does, a drop in center can provide Appellant with socialization and outings that will be beneficial to her and to her quality of life. [REDACTED] also testified that the reason [REDACTED] is not at the hearing to testify is because they have an ongoing therapeutic relationship with Appellant and that if they were required to come to court and tell Appellant that she can no longer continue in a program that she loves, that therapeutic relationship would be damaged.

The Appellant bears the burden of proving that she met the medical necessity criteria to have Medicaid-covered skill-building services for three (3) days per week. It is clear that the Department did not arbitrarily reduce skill building services to the Appellant, but rather properly assessed the Appellant's progress on clinical review in light of medical necessity. It is also clear from the testimony and evidence that Appellant, during five years of skill building, has met the level of improvement that can be expected, and is ready to transition to a less intensive service, such as a drop in program or clubhouse.

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 medically and clinically 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 (3) days per week. As indicated above, the evidence does not support a finding that Appellant requires skill building three (3) days per week because Appellant has met the level of improvement expected from the skill building program. As such, the CMH provided sufficient evidence that medical necessity no longer exists for Medicaid covered skill-building services for three (3) days per week.

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The Appellant, and her witnesses, although credible and clearly concerned for Appellant's well-being, failed to preponderate the burden of proof that the Department erred in reducing the number of skill building days on clinical assessment of her situation.

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 three (3) days per week to two (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:

[REDACTED]

Date Mailed: 4/11/2012

***** 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.

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