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) 373-4147

IN THE MATTER OF:

Docket No. 2013-21984 CMH
Case No.

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 . Appellant appeared and testified on own behalf.

, represented North Country CMHSP - (Department or CMH) , CMH , r; and , appeared as witnesses for the Department.

ISSUE

Did CMH properly deny authorization for psychiatric services 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 year-old Medicaid beneficiary, born with a diagnosis of Borderline Personality Disorder and Bi-Polar Disorder. (Exhibits A, 1; Testimony)

2. On , Appellant requested a local appeal after request for psychiatric services alone was denied. (Exhibit A).

3. On , the CMH's reviewed Appellant's records and upheld the denial of psychiatric services. The indicated:

> Psychiatry only is not appropriate due to instability, suicidal behaviors and diagnoses. It is counter therapeutic to split treatment providers (outside agency therapist) in this patient with Borderline Personality Disorder. We would offer more intensive ACT services here. (Exhibit A)

4. On , CMH sent an Adequate Action Notice to the Appellant indicating that request for psychiatry services alone was denied. The Notice included rights to a Medicaid fair hearing. (Exhibit A).

5. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on (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 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.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2013, pp 12-13

Section 3 of the Medicaid Provider Manual, Mental Health and Substance Abuse Section, lists covered services:

Section 3 – Covered Services

3.1 Assertive Community Treatment
3.2 Assessments
3.3 Behavior Treatment Review
3.4 Child Therapy
3.5 Clubhouse Psychosocial Rehabilitation Programs
3.6 Crisis Interventions
3.7 Crisis Residential Services
3.8 Family Therapy
3.9 Health Services
3.10 Home-Based Services
3.11 Individual/Group Therapy
3.12 Inpatient Psychiatric Hospital Admissions
3.13 Intensive Crisis Stabilization Services
3.14 Intermediate Care Facility For Individuals With Mental Retardation (ICF/MR) Services
3.15 Medication Administration
3.16 Medication Review
3.17 Nursing Facility Mental Health Monitoring
3.18 Occupational Therapy
3.19 Outpatient Partial Hospitalization Services
3.20 Personal Care in Licensed Specialized Residential Settings
3.21 Physical Therapy
3.22 Speech, Hearing, and Language
3.23 Substance Abuse
3.24 Targeted Case Management
3.25 Telemedicine
3.26 Transportation
3.27 Treatment Planning

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2013, pp 15-23

Assertive Community Treatment (ACT) is covered in Section 4 of the Medicaid Provider Manual, Mental Health and Substance Abuse Section. That section provides, in part:

> **SECTION 4 – ASSERTIVE COMMUNITY TREATMENT PROGRAM**
>
> Assertive Community Treatment (ACT) is a set of intensive clinical, medical and psychosocial services provided by a mobile multi-disciplinary treatment team. Michigan adopted a modified ACT model in the 1980's tailored to Michigan service needs. While a PIHP is free to use either the Michigan ACT model or the federal Substance Abuse and Mental Health Services Administration (SAMHSA) ACT model, with prior Department approval, the use of the Michigan model is strongly encouraged.
>
> ACT provides basic services and supports essential to maintaining the beneficiary's ability to function in community settings, including assistance with accessing basic needs through available community resources, such as food, housing, and medical care and supports to allow beneficiaries to function in social, educational, and vocational settings. ACT services are based on the principles of recovery and person-centered practice and are individually tailored to meet the needs of the beneficiary. Services are provided in the beneficiary's residence or other community locations by all members of the ACT team.
>
> All ACT team staff must have a basic knowledge of ACT programs and principles acquired through MDCH approved ACT specific training within six months of hire, and then at least one MDCH approved ACT specific training annually.
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> *Medicaid Provider Manual*
> *Mental Health and Substance Abuse Section*
> *January 1, 2013, p 24*

The CMH's [redacted] testified that [redacted] had reviewed all of Appellant's medical records and determined that the most appropriate level of services for Appellant currently would be Assertive Community Treatment (ACT), which includes psychiatry services. The CMH's [redacted] indicated that ACT services are a higher level of treatment than psychiatry services alone. The CMH's [redacted] indicated that while Appellant has made some gains, [redacted] has had difficulty with suicidal ideas and behaviors as recently as [redacted], including [redacted] psychiatric hospitalizations in [redacted]. The CMH's [redacted] testified that in [redacted] clinical

opinion, Appellant is not stable enough for psychiatry services alone and that a more intensive level of services would be indicated at this time. The CMH's indicated that if an intensive level of treatment is not in place, there is a serious risk to Appellant of further suicidal ideas and behaviors. The CMH's did indicate that should Appellant demonstrate progress with ACT, could eventually graduate to a less intensive level of service.

Appellant did not deny the hospitalizations and suicide attempts in , but testified that has made significant progress since that time and, weeks ago, made the major decision to go on living. Appellant testified that is very happy with current therapist and wishes to continue to see . Appellant testified that was in ACT back in and that it was one of the worst experiences of life. Appellant indicated that the ACT staff were too controlling and that the control made actually fight back against the treatment. Appellant testified that has been attending the times per week and has found the program to be extremely helpful. Appellant indicated that if is not allowed psychiatry services alone, will not have any psychiatric services because will not go back to ACT. Appellant also testified that had never met the CMH's so does not believe the Medical Director is in a position to make this decision. Appellant indicated that current therapist wishes for to have psychiatry services. (See Exhibit 2) It bears noting, however, that Appellant's therapist does not indicate that Appellant should have psychiatry services alone.

Based on the evidence presented, CMH did properly deny Appellant psychiatry services alone. The CMH's testified in a credible manner that had reviewed all of Appellant's medical records and made a clinical judgment that Appellant would be in danger i received psychiatry services alone. The undersigned is not in a position to disagree with the CMH's opinion, even though Appellant clearly feels strongly about re-entering the ACT program. Here, Appellant has requested psychiatry services and those services are part of the ACT program. Appellant is strongly encouraged to take advantage of those services in the ACT program. If Appellant is doing as well as claims, should graduate from the ACT program to a less intensive level of care in no time.

It also bears pointing out that psychiatry services alone are not even listed as a covered service under Section 3 of the Medicaid Provider Manual, Mental Health and Substance Abuse Section. Instead, psychiatry services are included under the Assertive Community Treatment (ACT) Section, the very program Appellant has been approved for. As such, the CMH's decision is also supported by the clear language of the Medicaid Provider Manual.

The burden is on the Appellant to prove by a preponderance of evidence that the CMH erred by denying psychiatry services alone. As indicated above, Appellant did not meet 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 psychiatry services alone for Appellant.

IT IS THEREFORE ORDERED that:

> The CMH's decision is AFFIRMED.

Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Mailed: 03/20/13

***** 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.