**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

[redacted],

Docket No. 2013-27343 CMH
Case No. [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]. The Appellant appeared and testified on his own behalf. [redacted], girlfriend, appeared as a witness for the Appellant. [redacted], Fair Hearing Officer, represented the [redacted] Community Health Organization [redacted] or CMH). [redacted], Service Coordinator of Therapy Services, and [redacted], Case Manager, appeared as witnesses for the CMH.

## ISSUE

Did the 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 [redacted] year-old Medicaid beneficiary with a diagnosis of Bi-Polar Disorder. (Uncontested)

2. The Appellant received 25 individual therapy sessions in the last Individual Plan of Service year. (Fair Hearings Officer and Service Coordinator Testimony)

3. The Service Coordinator spoke with the treating therapist and confirmed that the Appellant had met the service goals identified in that Individual Plan of Service. (Service Coordinator Testimony)

4. A new Individual Plan of Service has been completed for the period of [redacted] through [redacted]. (Exhibit 1, pages 4-5)

5. The Service Coordinator spoke with the Appellant and understood that he is requesting more individual therapy services for addition. (Service Coordinator Testimony)

6. Community Supports Treatment Services offers group therapy services for addiction. (Service Coordinator Testimony)

7. Group therapy has been offered to the Appellant but the Appellant has refused these services. (Service Coordinator and Case Manager Testimony)

8. On [redacted], the CMH sent an Adequate Action Notice to the Appellant indicating that his request for individual therapy was denied. The Notice included rights to a Medicaid fair hearing. (Exhibit 1, pages 2-3)

9. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [redacted].

## 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 or Department) operates a section 1915(b) Medicaid Managed Specialty Services waiver. WCHO contracts with the MDCH to provide specialty mental health services. Services are provided by the 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**
>
> 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, October 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, October 1, 2012, Page 18*

The Fair Hearing Officer and Service Coordinator testified that the Appellant received 25 individual therapy sessions in the last Individual Plan of Service year. The Service Coordinator spoke with the treating therapist and confirmed that the Appellant had met the service goals identified in that Individual Plan of Service. The Service Coordinator spoke with the Appellant and understood that he is requesting more individual therapy services for addition. However, Community Supports Treatment Services offers group therapy services for addiction. Group therapy has been offered to the Appellant and he has refused these services. (Fair Hearings Officer, Service Coordinator, and Case Manager Testimony)

The Appellant disagrees with the denial of individual therapy services. The Appellant's testimony indicated he was not satisfied with most of the individual therapy sessions. The Appellant stated only about five sessions mattered and the rest were a joke. Therefore the Appellant believes he should have another 20 sessions so that he would receive 25 appropriate sessions. The Appellant has refused group therapy explaining that he is a sex offender and has mood swings due to bipolar disorder. Accordingly, the Appellant has potential safety concerns for himself as well as other group therapy participants. Also, the Appellant has had ADD and ADHD since he was five years old. The Appellant has a hard time opening up and discussing the issues, such as medications, boredom, stressors, and contributing factors toward re-offending. Individual therapy has worked best for him. The Appellant stated that he has completed several therapy programs, including sex offender, substance abuse and domestic violence. The Appellant has been encouraged to continue with individual therapy services. (Appellant Testimony)

The Appellant's girlfriend testified the Appellant has a hard time opening up to people and it bothers him even to talk to her about stuff. The Appellant's girlfriend believes the Appellant needs someone to talk to. (Girlfriend Testimony)

As noted during the [redacted], hearing proceedings, the issues the Appellant raised regarding the individual therapy sessions he already received are outside the scope of this hearing. As the Fair Hearings Officer stated, the Recipient Rights process would be the appropriate avenue for those issues to be addressed.

Based on the evidence presented, the CMH properly denied the Appellant's request for 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, the Appellant completed 25 individual therapy sessions and the Service Coordinator confirmed with the treating therapist that the Appellant had met the service goals identified in that Individual Plan of Service. (Service Coordinator Testimony) The CMH has offered group therapy services, which the Appellant has refused. The Fair Hearings Officer also testified that the CMH can address crisis situations that could potentially arise in group therapy. (Fair Hearings Officer Testimony) 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 his 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.

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 4/23/2013

***** 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.