

**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:**

██████████,

Appellant.

\_\_\_\_\_ /

Docket No. 2013-27351 CMH  
Case No. ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.* and upon the request for a hearing filed on behalf of Appellant/Petitioner.

After due notice, a hearing was held on ██████████. ██████████, Appellant's Home Health Care Provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Quality Improvement Manager and Fair Hearings Officer, appeared and testified on behalf of Respondent ██████████ Healthcare Systems (██████████ or "Respondent"). ██████████, Chief Executive Officer; ██████████, Utilization Manager; ██████████, Recipient Rights Officer; ██████████, ██████████ County Director; ██████████, Care Manager; and ██████████, Assistant Community Supports Manager also testified as witnesses for Respondent.

**ISSUE**

Did ██████████ properly terminate Appellant's skill-building assistance?

**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 ██████ year-old Medicaid beneficiary whose diagnoses include schizoaffective disorder, eating disorder NOS, borderline personality disorder, morbid obesity, diabetes, large abdominal hernia, lupus, and fibromyalgia among others. (Respondent's Exhibit 11, page 1; Respondent's Exhibit 14, page 3).
2. ██████████ is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in ██████████'s service area.

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3. Appellant has been receiving services through [REDACTED], including skill-building assistance at the [REDACTED] since [REDACTED]. (Testimony of Appellant; [REDACTED]; Respondent's Exhibit 11, pages 1-2).
4. In the most recent authorization of skill-building assistance, in [REDACTED] of [REDACTED], Appellant was approved for skill-building assistance at the [REDACTED] for one day a month. (Respondent's Exhibit 11, page 1).
5. Appellant only attended four days of skill-building assistance during all of [REDACTED]. (Testimony of Appellant; Testimony of [REDACTED]; Respondent's Exhibit 3).
6. On [REDACTED], [REDACTED] sent Appellant written notice that the skill-building assistance would be terminated on [REDACTED]. The notice also provided that the service was not medically necessary, the documentation submitted did not establish any medical necessity, and that Appellant had not used the services since [REDACTED] [REDACTED] [REDACTED]. (Respondent's Exhibit 2, page 1).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant regarding the termination of skill-building assistance. (Petitioner's Exhibit 1, page 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.]

Moreover, 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) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. ██████████ contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

In this case, Appellant was receiving the covered service of skill-building assistance. With respect to skill-building assistance, the applicable version of the Medicaid Provider Manual (MPM), states:

### **17.3.K. SKILL-BUILDING ASSISTANCE**

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice 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

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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 incidental to the provision of that assistance, 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

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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.

[MPM, October 1, 2012 version, Mental Health/Substance Abuse Chapter, pages 125-126.]

Here, ██████████ terminated Appellant's skill-building assistance after finding that the assistance was no longer medically necessary. Medicaid beneficiaries are only entitled to medically necessary 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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230; MPM, October 1, 2012 version, Mental Health/Substance Abuse Chapter, pages 12-13.

Appellant bears the burden of proving by a preponderance of evidence that ██████████ erred in terminating the assistance. Here, Appellant has failed to meet that burden of proof for the reasons discussed below.

In finding that that skill-building assistance is not medically necessary in this case, ██████████ first notes that Appellant has barely utilized the authorized service. Specifically, Respondent notes that it is undisputed that Appellant only utilized the assistance four days in all of ██████████ (Testimony of Appellant; Testimony of ██████████), which does suggest that the assistance is not medically necessary. Similarly,

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Respondent also asserts that, given the above policy stating that skill-building assistance “must be furnished on a regularly scheduled basis (several hours a day, one or more days a week)” (MPM, October 1, 2012 version, Mental Health/Substance Abuse Chapter, pages 125), Appellant still would not meet the criteria for the service even if she had attended the program one day a month as authorized (Respondent’s Exhibit 11, page 1).

Appellant does not dispute any of Respondent’s arguments, but she did testify that she only failed to attend the program one day a month because of extenuating circumstances. (Testimony of Appellant). Additionally, she correctly notes that she was specifically approved for services one day a month and that ██████████ therefore clearly did not have an issue with the scheduling of such few hours in the past. However, to the extent that Respondent did not follow the MPM in the past and failed to ensure that skill-building assistance was furnished on a regularly scheduled basis, that failure to follow policy in the past does not justify the continuation of services now, especially where Appellant continues to only want one day of skill-building assistance a month.

Respondent also argues that skill-building assistance is not necessary in this case given Appellant’s goals and purpose in requesting the service. As discussed above, skill-building assistance consists of activities that are meant to “assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering.” (MPM, October 1, 2012 version, Mental Health/Substance Abuse Chapter, pages 125). However, Appellant’s Individual Plan of Service (IPOS) does not contain any specific skill-building goals. (Testimony of ██████████; Respondent’s Exhibits 1, 11-13). Moreover, Appellant appears to only want the assistance as a social outlet. During the hearing, both Appellant and her representative reiterated that the skill-building assistance is her only social outlet and that is why she needs the service. (Testimony of Appellant; Testimony of Appellant’s representative). However, per the MPM, social benefits to a beneficiary are not a reason to authorize skill-building assistance.

Given Appellant’s non-covered reasons for requesting and receiving skill-building assistance, in addition to the limited and irregular use of the service in the past, ██████████ properly found that the skill-building assistance is not medically necessary and should be terminated.

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**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that [REDACTED] properly terminating Appellant's skill-building assistance.

**IT IS THEREFORE ORDERED** that:

[REDACTED]'s decision is **AFFIRMED**.

*Steven Kibit*

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

cc:

[REDACTED]

Date Mailed: 4/19/2013

**\*\*\* 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.