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. 2013-30655 CMH

[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] [redacted] Unit Facilitator, represented the Appellant. [redacted] the Appellant, appeared and testified. [redacted], Public Guardian, and [redacted] Grandmother and Co-Guardian, appeared to consent to the Appellant's appeal and choice of Authorized Hearing Representative.

[redacted] Attorney, represented the [redacted] County Community Mental Health Authority (CMH or Department). [redacted], Supports Coordinator and [redacted] PIHP Care Management Director, appeared as witnesses for the Department.

ISSUE

Did the CMH properly reduce the Appellant's authorization for [redacted] [redacted] [redacted]")?

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 Medicaid beneficiary who has been receiving services through the CMH since at least [redacted] (Supports Coordinator Testimony)

2. CMH is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

3. The Appellant is a [redacted]-year old Medicaid beneficiary whose date of birth is [redacted] (Exhibit 2, page 1)

4. The Appellant is diagnosed with schizoaffective disorder, post-traumatic stress disorder, panic disorder, and bulimia nervosa. (Exhibit 3, page 1)

5. The Appellant lives with her grandmother. (Exhibit 3, page 2)

6. On [redacted] an Individual Plan of Service Meeting was held. The Appellant, her Public Guardian, the Supports Coordinator and an individual from the [redacted] Staff were present. In part, the authorization for [redacted] was discussed. It was determined that the Appellant would receive [redacted] services not to exceed [redacted] ([redacted]) times weekly and not to exceed [redacted] ([redacted]) hours each day for work units/skill building activities and classes. In addition, the Appellant was authorized [redacted] hours of time for recreation monthly. (Exhibit 3, page 4)

7. On [redacted], CMH sent a Notice and Hearing Rights to Appellant and her Public Guardian notifying her that there had been an Individual Plan of Service/Amendment/Periodic Review that defines the amount, duration, and scope of the services that are authorized, which will start within [redacted] calendar days from the agreed upon start date. The notice included rights to a Medicaid fair hearing. (Exhibit 4)

8. The Michigan Administrative Hearing System received Appellant's request for hearing 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) operates a section 1915(b) and 1915(c) 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.*

The *Medicaid Provider Manual, Mental Health/Substance Abuse* section articulates Medicaid policy for Michigan. It states with regard to Clubhouse Psychosocial Rehabilitation Programs:

SECTION 5 – CLUBHOUSE PSYCHOSOCIAL REHABILITATION PROGRAMS

A clubhouse program is a community-based psychosocial rehabilitation program in which the beneficiary (also called clubhouse "members"), with staff assistance, is engaged in operating all aspects of the clubhouse, including food service, clerical, reception, janitorial and other member supports and services such as employment, housing and education. In addition, members, with staff assistance, participate in the day-to-day decision-making and governance of the program and plan community projects and social activities to engage members in the community. Through the activities of the ordered day, clubhouse decision-making opportunities and social activities, individual members achieve or regain the confidence and skills necessary to lead vocationally productive and socially satisfying lives.

5.1 PROGRAM APPROVAL

PIHPs must seek approval for providers of psychosocial rehabilitation clubhouse services from MDCH. (Refer to the Directory Appendix for contact information.) MDCH approval will be based on adherence to the requirements outlined below.

5.2 TARGET POPULATION

Clubhouse programs are appropriate for adults with a serious mental illness who wish to participate in a structured program with staff and peers and have identified psychosocial rehabilitative goals that can be achieved in a supportive and structured environment. The beneficiary must be able to participate in, and benefit from, the activities necessary to support the program and its members, and must not have behavioral/safety or health issues that cannot adequately be addressed in a program with a low staff-to-member ratio.

5.3 ESSENTIAL ELEMENTS

Member Choice/Involvement

- All members have access to the services/supports and resources with no differentiation based on diagnosis or level of functioning.

- Members establish their own schedule of attendance and choose a unit that they will regularly participate in during the ordered day.
- Members are actively engaged and supported on a regular basis by clubhouse staff in the activities and tasks that they have chosen.
- Membership in the program and access to supportive services reflects the beneficiary's preferences and needs building on the person-centered planning process.
- Both formal and informal decision-making opportunities are part of the clubhouse units and program structures so that members can influence and shape program operations.

Informal Setting

- Staff and members work side-by-side to generate and accomplish individual/team tasks and activities necessary for the development, support, and maintenance of the program.
- Members have access to the clubhouse during times other than the ordered day, including evenings, weekends, and all holidays (including New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day).

Program Structure and Services

The program's structure and schedule identifies when the various program components occur, e.g., ordered-day, vocational/educational. Other activities, such as self-help groups and social activities shall be scheduled before and after the ordered day.

Ordered Day

The ordered day is a primary component of the program and provides an opportunity for members to regain self-worth, purpose, and confidence. It is made up of those tasks and activities necessary for the operation of the clubhouse and typically occurs during normal work hours. The ordered day is carried out in organizational units defined by the clubhouse that accomplish the work necessary to operate the clubhouse and meet the community living needs of the members, such as housing and transportation. Although participation in the ordered day provides opportunities to

develop a variety of interpersonal and vocationally related skills, it is not intended to be job-specific training. Member participation in the ordered day provides experiences that will support members' recovery, and is designed to assist members to acquire personal, community and social competencies and to establish and navigate environmental support systems.

Employment Services and Educational Supports
Services directly related to employment, including transitional employment, supported employment, on-the-job training, community volunteer opportunities, and supports for the completion or initiation of education or training and other vocational assistance must be available.

Member Supports
Opportunities for clubhouse members to provide and receive support in the community in areas of outreach, warm line, self-help groups, housing supports, entitlements, food, clothing and other basic necessities or assistance in locating community resources must be available.

Social Supports
Opportunities for members to develop a sense of a community through planning and organizing clubhouse social activities. This may also include opportunities to explore recreational resources and activities in the community. The interests and desires of the membership determine both spontaneous and planned activities.

5.4 PSYCHOSOCIAL REHABILITATION COMPONENTS
Following are some of the broad domains of psychosocial rehabilitative goals and objectives. Based on the member's individual plan of service developed through the person-centered planning process, these are carried out during the member's participation in the ordered day and through interactions with other staff and members. Staff may also work informally with members on individual goals while working side-by-side in the clubhouse. (Emphasis added.)

Symptom Identification and Care

- Identification and management of situations and prodromal symptoms to reduce the frequency, duration, and severity of psychological relapses.

- Gaining competence regarding how to respond to a psychiatric crisis.
- Gaining competence in understanding the role psychotropic medication plays in the stabilization of the members' well being.
- Working in partnership with members who express a desire to develop a crisis plan.

Competency Building

- Community living competencies (e.g., self-care, cooking, money management, personal grooming, maintenance of living environment).
- Social and interpersonal abilities (e.g., conversational competency, developing and/or maintaining a positive self-image, regaining the ability to evaluate the motivation and feelings of others to establish and maintain positive relationships).
- Personal adjustment abilities (e.g., developing and enhancing personal abilities in handling every day experiences and crisis, such as stress management, leisure time management, coping with symptoms of mental illness). The goal of this is to reduce dependency on professional caregivers and to enhance independence.
- Cognitive and adult role competency (e.g., task-oriented activities to develop and maintain cognitive abilities, to maximize adult role functioning such as increased attention, improved concentration, better memory, enhancing the ability to learn and establishing the ability to develop empathy).

Environmental Support

- Identification of existing natural supports for addressing personal needs (e.g., families, employers, and friends).
- Identification and development of organizational support, including such areas as sustaining personal entitlements, locating and using community resources or other supportive programs.

Medicaid Provider Manual, Mental Health and Substance Abuse Section, January 1, 2013, Pages 30-32.

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve her goals.

On [redacted] an Individual Plan of Service Meeting was held. The Appellant, her Public Guardian, the Supports Coordinator and an individual from the [redacted] Staff were present. In part, the authorization for [redacted] was discussed. It was determined that the Appellant would receive Clubhouse services not to exceed [redacted] times weekly and not to exceed [redacted] hours each day for work units/skill building activities and classes. In addition, the Appellant was authorized [redacted] hours of time for recreation monthly. (Exhibit 3, page 4)

The Supports Coordinator testified that she is licensed as a bachelor's level social worker, and has had this case since [redacted] The Supports Coordinator indicated her understanding that the Appellant really wants [redacted] days of Clubhouse services rather than the [redacted] days authorized based on the [redacted] Individual Plan of Service. The Supports Coordinator testified that she has had an opportunity to review the assessed level of need in accordance with the Medicaid Provider Manual policy and determined it is not medically necessary for the Appellant to attend [redacted] more day per week. The Appellant is doing well at this time as evidenced by reduced, well managed symptoms. The Appellant has been able to self-manage her medications for over one year without incident and reports good coping skills to manage her symptoms. The [redacted] services can reasonably achieve their purpose at [redacted]) days per week. At the time of the [redacted] meeting, with the Public Guardian present, the Appellant was in agreement with the authorization at [redacted] days per week and did not indicate she wanted more hours. (Supports Coordinator Testimony)

The PIHP Care Management Director testified he is a fully licensed psychologist. In reviewing this case, the PIHP Care Management Director concurs with the determination of the Supports Coordinator. (PIHP Care Management Director Testimony)

The Unit Facilitator testified he works at [redacted] and the Appellant asked him to represent her in this appeal. The Appellant disagrees with the authorization at only [redacted] days per week and is requesting [redacted] days of [redacted] Services per week. It was noted that the above cited policy addresses the essential elements of [redacted] and specifies that:

- All members have access to the services/supports and resources with no differentiation based on diagnosis or level of functioning.
- Members establish their own schedule of attendance and choose a unit that they will regularly participate in during the ordered day.

The Unit Facilitator clarified that they are not requesting unlimited access, but rather that the Appellant is not being allowed to set her own schedule. The Unit Facility provided documentation to support the medical necessity of the [redacted] model, which includes having members set their own schedule. (Unit Facilitator Testimony; Exhibits A-D)

The Appellant described what she does when she attends [redacted]. The Appellant stated attending [redacted] makes her life better. Otherwise, the Appellant is not involved in the community much due to limited access to transportation. The Appellant also acknowledged that she did not let the Supports Coordinator know she wanted more [redacted] hours during the [redacted] Individual Plan of Service meeting. Rather, the Appellant appealed the determination after her grandmother told her the Supports Coordinator said all the Appellant's hours would be cut the next year. (Appellant Testimony)

The Appellant bears the burden of proving by a preponderance of the evidence that the CMH determination to reduce the [redacted] authorization was incorrect. Here, the Appellant did not prove by a preponderance of the evidence that an additional day of [redacted] services was medically necessary. The policy is clear that [redacted] members are to have access to services/supports and resources and further are to establish their own schedule of attendance. It was not contested that access to [redacted] Services is not unlimited. However, section 5.4 of the above cited policy states, in part:

> Following are some of the broad domains of psychosocial rehabilitative goals and objectives. Based on the member's individual plan of service developed through the person-centered planning process, these are carried out during the member's participation in the ordered day and through interactions with other staff and members.

Accordingly, the individual plan of services properly addresses goal and objectives for the [redacted] participation. Under42 CFR 440.230, the CMH must determine the services provided are appropriate in scope, duration, and intensity to reasonably achieve the purpose of the covered service. The CMH established the amount of [redacted] services that are medically necessary for the Appellant, [redacted] days per week and appropriately left the decisions of scheduling attendance and unit participation within that authorization to the Appellant. Further, the Appellant acknowledged that she did not indicate any disagreement with the authorization during the [redacted] Individual Plan of Service meeting, rather, the appeal was prompted by concern that the Supports Coordinator intended to discontinue all the Appellant's hours the next year.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly reduced the Appellant's authorization for [redacted] services.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

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

Date Signed: [redacted]

Date Mailed: [redacted]

CL/db

cc: [redacted]

***** 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.