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. 2013-37893 CMH

[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] [redacted] Appellant's father/guardian appeared and testified for the Appellant.

[redacted], Medicaid Fair Hearings Officer, appeared for the Detroit-Wayne County Community Mental Health Agency (Agency/CMH). [redacted] Program Supervisor [redacted], [redacted] MA, LPC, NSO Clinical Therapist for Appellant, [redacted] MSW, LMSW, Supervisor [redacted] Appellant's Supports Coordinator, [redacted], and [redacted] CMH Consultant, appeared as witnesses for CMH.

ISSUE

Was the CMH's termination of the Appellant's Medicaid covered skill-building services in accordance with 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 3[redacted] Medicaid beneficiary ([redacted] who is diagnosed with a developmental disability and autism. (Exhibit A, pp. 4, 5, and testimony).

2. [redacted] County Community Mental Health contracts [redacted] who is Appellant's Managed Comprehensive Provider Network (MCPN) to manage the services that the CMH authorizes. Appellant was receiving services from [redacted] who contracted with the [redacted] program to provide Appellant with skill building services on [redacted] and [redacted] for [redacted] and [redacted] hours including [redacted]. (Exhibit A, pp. 2-3, and testimony).

3. Appellant was receiving Medicaid covered skill building services through the [redacted] program. (Exhibit A, pp. 2-3, 22-23 and testimony).

4. On [redacted], J[redacted] sent the Appellant an advance action notice that his CMH skill building services would be terminated effective [redacted] The reason given was "You are no longer participating in the [redacted] program due to behavioral issues." The notice included Appellant's rights to a fair hearing. (Exhibit A, pp. 22-23).

5. The Appellant's request for hearing was received by MAHS on [redacted] (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 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 evidence presented in this case demonstrates that on [redacted] Appellant was sent an Advance Action Notice that his skill building services were to be terminated effective [redacted]. The Appellant appealed the denial on [redacted]

The CMH must follow the Department's Medicaid Provider Manual when approving or denying mental health services to an applicant, and the CMH must apply the medical necessity criteria found within the Medicaid Provider Manual. The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, April 1, 2013, Section 2.5* lists the criteria the CMH must apply as follows:

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.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other
- individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance
- abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. 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. [pp. 12-14].

The *Medicaid Provider Manual, Mental Health/Substance Abuse, October 1, 2012, S*ection 17, articulates Medicaid policy for Michigan, for B3 services including skill building services.

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and
- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and
- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and
- Additional criteria indicated in certain B3 service definitions, as applicable.

Decisions regarding the authorization of a B3 service (including the amount, scope and duration) must take into account the PIHP's documented capacity to reasonably and equitably serve other Medicaid beneficiaries who also have needs for these services. The B3 supports and services are not intended to meet all the individual's needs and preferences, as some needs may be better met by community and other natural supports. Natural supports mean unpaid assistance provided to the beneficiary by people in his/her network (family, friends, neighbors, community volunteers) who are willing and able to provide such assistance. It is reasonable to expect that parents of minor children with disabilities will provide the same level of care they would provide to their children without disabilities. MDCH encourages the use of natural supports to assist in meeting an individual's needs to the extent that the family or friends who provide the natural supports are willing and able to provide this assistance. PIHPs may not require a beneficiary's natural support network to provide such assistance as a condition for receiving specialty mental health supports and services. The use of natural supports must be documented in the beneficiary's individual plan of service. [p. 111].

The *Medicaid Provider Manual, Mental Health/Substance Abuse, April 1, 2013, pp. 125 and 126,* 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 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 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.

[redacted] the Program Supervisor for the [redacted] Skill Building Assistance Program stated the Appellant was a participant in their skill building program. [redacted] stated the Appellant was being served as an individual with a developmental disability and he is also diagnosed with autism. Appellant started the skill building program on [redacted] and his last day at the program was on [redacted] stated Appellant attended the program on [redacted] and [redacted] for a total of [redacted] and [redacted] hours per day including [redacted]. Appellant was receiving nonvocational skill building services including community based activities, socialization skills, daily living skills, and skills that would assist him getting a job in the community.

[redacted] stated that there were several incidents involving the Appellant while he was attending the skill building services at J[redacted]. [redacted] had the incident reports, but did not submit them as evidence for the hearing. She stated there were three incidents that were pretty extreme where Appellant became physically aggressive with staff. [redacted] stated that the incidents occurred both at [redacted] and while he was out in the community.

[redacted] stated after the last incident that occurred on [redacted] that involved the Appellant hitting his one-on-one staff person several times and hitting his case coordinator several times, Appellant was placed on hold. Thereafter, a team meeting was held to determine what could be done to resolve the issues involving the Appellant unpredictable behaviors. [redacted] stated the one-on-one staffing in place was not capable of managing Appellant's physical acting out behaviors. [redacted] determined that the staffing being provided was unsuccessful in managing the Appellant's behavior. Accordingly, Appellant was placed on hold, and an Advance Action Notice was sent out on [redacted] terminating Appellant's skill building services at [redacted] effective [redacted] (Exhibit A, pp. 22-23).

Despite the termination, [redacted] stated that [redacted] at [redacted] was contacted to see about additional staffing, possibly two-on-one for Appellant so he could be returned to the [redacted] program. [redacted] stated there were ongoing efforts to train the two-on-one staffing offered by [redacted] to make it possible for the Appellant to return to the program. [redacted] stated that there was even a tentative return date of [redacted].

[redacted], the Appellant's therapist at [redacted] stated they followed the Appellant's behavioral plan as set forth in the Appellant person centered plan to the best of their ability, but due to his unpredictable behavior their efforts did not prevent him from striking out at the various staff members. [redacted] stated the Appellant responds to both internal and external stimuli resulting in his physically aggressive and unpredictable behavior. [redacted] stated appellant was nonverbal and unable to communicate his feelings.

[redacted] also stated the Appellant is quite an imposing figure at about [redacted] foot [redacted] inches and around [redacted] pounds. [redacted] stated the Appellant's unpredictable behavior tended to nullify the Appellant's behavioral plan. [redacted] felt that with two-on-one staffing the Appellant might be able to return to [redacted] and benefit from the program. [redacted] stated they needed time to coordinate with Appellant's primary care physician, his neurologist, and his private psychiatrist to fully understand the nature of his treatments and the potential effects on the Appellant's behaviors.

Appellant's father testified he agreed with the efforts being made so the Appellant could return to the [redacted] program. He stated his whole reason for appealing was to get the Appellant back in the program so he could become a productive member of society. Appellant's father stated the Appellant was on [redacted] and [redacted]. (See also Exhibit A, p.5). Appellant's father stated he did not know whether the Appellant's behavior was beyond what could be managed by the one-on-one staffing. He did acknowledge the Appellant's behavior was the same at home. Appellant's father also indicated he thought two-on-one staffing would be great for the Appellant. He acknowledged that it might take time to put things in place, but felt they had been working on this since [redacted]. Appellant's father stated he wanted to get the Appellant back into the program a lot sooner.

A review of the evidence presented in this case shows that the Appellant's behavior at the [redacted] program was such that he could not be successfully handled by the one-on-one staffing. Appellant was posing a serious threat to the safety of staff and other participants in the program. It is obvious that the Appellant was not able to fully benefit from the program. In short, the evidence shows the CMH acted appropriately by terminating or discontinuing the Appellant's skill building services at that time.

The Appellant bears the burden of proving that the CMH did not act properly when it terminated his skill building services. The CMH provided sufficient evidence that Appellant could no longer attend skill building services due to his behavioral problems at the time he was terminated from the program. It is proper for the CMH to terminate services that are not effective for a given condition based upon professionally and scientifically recognized and accepted standards of care. Accordingly, the CMH acted appropriately in terminating the skill building services. Furthermore, the CMH did not totally abandon the provision in the Appellant's person centered plan for skill building services. There are ongoing efforts to provide two-on-one staffing for the Appellant so that he will be able return to the skill building program at [redacted] in the near future.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH's termination of Appellant's Medicaid covered skill-building service was in accordance with policy.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/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.