

**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. 2013-58928 CMH

██████████

██████████

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 ██████████ ██████████ the Appellant, appeared on her own behalf.

██████████, Attorney, represented the ██████████ Community Mental Health Authority (CMH or Department). ██████████ Clinical Supervisor, and ██████████ PIHP Care Management Director, appeared as witnesses for the Department. ██████████, Data Management Director, was also present as an observer.

ISSUE

Did the CMH properly reduce the Appellant's authorization for 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. The Appellant is a Medicaid beneficiary who has been receiving services through the CMH.
2. The 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 ██████████-year old Medicaid beneficiary whose date of birth is ██████████ (Exhibit 2, page 1)
4. The Appellant is diagnosed with major depressive disorder, dementia due to conditions classified elsewhere without behavioral disturbance, and attention-deficit/hyperactivity disorder. (Exhibit 3, page 1)

5. The Appellant lives in her own apartment. (Exhibit 3, page 2)
6. On ██████████ an Individual Plan of Service Meeting was held. The Appellant and the clinician/Supports Coordinator were present. In part, the authorization included ██████ () hours of Skill-Building Assistance each week. It was also noted that the Appellant was judged to be job ready and would be graduating from Creative ██████████ with a target date of ██████████. A periodic review of her plan of services would be due at that time. (Exhibit 3)
7. On ██████████ an Individual Plan of Service Periodic Review was completed. The Appellant's Skill-Building Assistance authorization was reduced to ██████ r () hours each week. (Exhibit 4)
8. On Ju ██████████ the CMH sent a Notice and Hearing Rights to Appellant notifying her of the reduction of services, specifically the classes at ██████████ which would be effective ██████████. The notice included rights to a Medicaid fair hearing. (Exhibit 5)
9. The Michigan Administrative Hearing System received Appellant's request for hearing on ██████████

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 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.

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.

*Medicaid Provider Manual,
Mental Health and Substance Abuse Section,
April 1, 2013, Pages 12-14
(Underline added by ALJ)*

The *Medicaid Provider Manual, Mental Health/Substance Abuse* section articulates Medicaid policy for Michigan. It states with regard to Skill-Building Assistance:

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

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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.

Medicaid Provider Manual, Mental Health and Substance Abuse Section, April 1, 2013, Pages 125-126.

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 ██████████, an Individual Plan of Service Meeting was held. The Appellant and the clinician/Supports Coordinator were present. In part, the authorization included ██████ () hours of Skill-Building Assistance each week. It was also noted that the Appellant was judged to be job ready and would be graduating from ██████████ with a target date of ██████████. A periodic review of her plan of services would be due at that time. (Exhibit 3)

On ██████████, an Individual Plan of Service Periodic Review was completed. The Appellant's Skill-Building Assistance authorization was reduced to ██████ hours each week. (Exhibit 4)

The Clinical Supervisor testified that she is licensed as a masters level social worker and supervises the primary case holder of the Appellant's case. The Appellant receives multiple services through the CMH. For the ██████████ periodic review, the amount scope and duration of Skill-Building Assistance services was considered. The Appellant had successfully graduated from the program and had met the goals of the particular classes. Accordingly, there was no longer a reason for that level of Skill-Building Assistance services. The Clinical Supervisor stated it was her understanding that the Appellant wants to continue the craft classes because she really enjoys them. The Clinical Supervisor is comfortable with the service package the Appealing is getting at this point. (Clinical Supervisor Testimony; Exhibits 3-7)

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 Clinical Supervisor. The PIHP Care Management Director noted

that he saw progress being achieved and he found that to be a very positive thing.
(PIHP Care Management Director Testimony)

The Appellant testified that the craft class is the main one of the different classes she has been taking. It was more than just gluing things together and making them look pretty. The Appellant explained that the same people are there and are comfortable together. The Appellant can relax and enjoy herself. The Appellant has learned many different ideas, which assists with trying to get her microenterprise of making jewelry going. Not going to class has given the Appellant more time to work on her apartment, sometimes she needs that break away from working on the daily things. The Appellant has things she has made in that class all over her home, which people comment on. It makes the Appellant feel good to say she made these things. While the help with the supplies is nice, the Appellant emphasized that she also learns a lot, gets ideas she would never have had on things to make, help with time management, moral support and socialization. There are other classes available in the community, but there are issues regarding transportation, finances, and finding others to go to these classes.
(Appellant Testimony)

The Appellant bears the burden of proving by a preponderance of the evidence that the CMH determination to reduce the Skill-Building Assistance authorization was incorrect. Here, the Appellant did not prove by a preponderance of the evidence that additional Skill-Building Assistance services were medically necessary. The Appellant's testimony explained how the services are important to her and what they mean to her. However, the Appellant's testimony did not show how additional Skill-Building Assistance services would meet the medical necessity criteria or advance a B3 goal. The available information supports the CMH determination to reduce the Appellant's Skill-Building Assistance services authorization to [REDACTED] hours per week.

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 Skill-Building Assistance 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]


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***** 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.