

**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. 2013-67338 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]. Appellant's mother/guardian appeared for the Appellant. [REDACTED], Appellant's Supports Coordinator with [REDACTED], and [REDACTED] Treasurer for [REDACTED] testified on the Appellant's behalf. Appellant was also present but did not testify.

[REDACTED], Assistant Corporation Counsel, [REDACTED] Community Mental Health Authority (CMH), represented the Department. [REDACTED] Director of the Access Center for CMH appeared as a witness for the Department.

ISSUE

Was the CMH's termination of the Appellant's Medicaid covered skill-building assistance 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 [REDACTED]-year-old Medicaid beneficiary ([REDACTED]) who has been receiving supports coordination services, CLS services, and respite services through CMH on a self-determination basis. Appellant also attends [REDACTED] and receives DHS Home Help Services. (Exhibit A, pp. 1-2, 10, 13 and testimony).

2. [REDACTED] Community Mental Health (CMH) is responsible for providing Medicaid-covered mental health and developmental disability services to eligible recipients in its service area.
3. On [REDACTED], CMH sent the Appellant an adequate action notice that her request for CMH skill building assistance – work prep was denied effective [REDACTED]. The reason given was the State does not allow tuition for the [REDACTED] to be billed as skill-building assistance, it is considered a duplication of services since CMH already pays a CLS worker to attend with the Appellant and [REDACTED] is not an authorized Medicaid Provider of skill building services and does not provide aide level support necessitating the attendance of the CLS worker to provide on-site support. (Exhibit A, p. 5 and testimony).
4. The Appellant's request for hearing was received by MAHS on [REDACTED]. (Exhibit A, p. 7).

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 Adequate Action Notice that her request for skill building assistance was denied 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. The *Medicaid Provider Manual, Mental Health/Substance Abuse, July 1, 2013*, Section 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) that 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, July 1, 2013*, pp. 126-127, 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], Director of the Access Center for CMH stated the Appellant is an adult diagnosed with mild mental retardation and a seizure disorder. She stated the Appellant has been receiving CMH services for [REDACTED] years, and is currently receiving Supports Coordination Services, CLS services respite care, and was attending [REDACTED] [REDACTED]. [REDACTED] indicated the CMH had been paying [REDACTED] per day for Appellant's attendance at [REDACTED] and continues to pay for Appellant's attendance during the pendency of the appeal. [REDACTED] stated the Appellant was notified that the tuition payments for Appellant's attendance at the [REDACTED] would be terminated due to a directive from the State. The reason given was the State does not allow tuition for the [REDACTED] to be billed as skill-building assistance, it is considered a duplication of services since CMH already pays a CLS worker to attend the farm with the Appellant. [REDACTED] is not an authorized Medicaid Provider of skill building services and does not provide aide level support necessitating the attendance of the CLS worker to provide on-site support.

Appellant's witnesses testified they made a request for the continued payment, as they thought Appellant should be able to get the tuition covered as she was receiving her services on a self-determination basis. The witnesses advised that the Appellant has been attending the [REDACTED] and has been doing well there and is very happy at the [REDACTED].

The Appellant bears the burden of proving that the CMH did not act properly when it denied her skill-building assistance. The CMH provided sufficient evidence that the State would not allow the tuition for the [REDACTED] to be billed as skill-building assistance. The [REDACTED] does not currently meet the criteria to be a skill-building provider, which is required to include aide level support in the services it provides, thus eliminating the need for CLS staffing at the [REDACTED]. The Department has indicated that it constitutes double billing for the Department to pay both the fee to attend the [REDACTED] and to pay for the Appellant's CLS staff. (Exhibit A, pp. 46-47). Unless or until [REDACTED] becomes an authorized Medicaid provider of skill-building services, CMH cannot authorize payment for the Appellant's attendance at the [REDACTED]. Accordingly, the CMH acted appropriately in denying the Appellant's request for skill-building assistance to pay the tuition for the [REDACTED].


DECISION AND ORDER

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

[REDACTED]
Docket No. 2013-67338 CMH
Hearing Decision & Order

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.