STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 14-011992 CMH

Appellant
______________________/

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 a request for a hearing filed on behalf of Appellant.

After due notice, a hearing was held on , Appellant's father and legal guardian, appeared and testified on Appellant's behalf. , Fair Hearings Officer, represented Respondent Community Mental Health ("CMH"). , Case Manager, and Access Specialist, testified as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for "Good Lives Model" therapy?

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

2. Appellant is a year-old Medicaid beneficiary who has been diagnosed with posttraumatic stress disorder; attention deficit hyperactivity disorder; and mild mental retardation. (Respondent's Exhibit A, pages 1, 7)

3. Appellant has been receiving services through the CMH, including individual therapy, and is in the process of transitioning out of an adult residential placement. (Respondent's Exhibit A, pages 1-2; Respondent's Exhibit B, page 1).

4. On , CMH staff held an Individual Plan of Service (IPOS) meeting and an Annual Clinical Assessment with Appellant and her parents. (Respondent's Exhibit A, pages 1-9; Respondent's Exhibit B, pages 1-11).

5. During that meeting and assessment, Appellant's legal guardian requested that Appellant receive Good Lives Model therapy at in . (Respondent's Exhibit B, page 9; Testimony of Appellant's representative).

6. According to Appellant's representative, other types of individual therapy have failed Appellant in the past and he wanted to try a new model. (Testimony of Appellant's representative).

7. Respondent's staff noted that the request was based on Appellant's guardian's wish to have Appellant tested and treated for sexual addiction. (Respondent's Exhibit A, page 9; Respondent's Exhibit B, page 9).

8. Following that meeting and assessment, the CMH authorized a number of services for Appellant, including psychiatric services and individual therapy. (Respondent's Exhibit A, page 8; Respondent's Exhibit B, pages 2-10).

9. also testified that she tried to enroll as the provider for the individual therapy, but it was determined that Appellant would be treated there for sexual addiction and that treatment for sexual addiction is not a Medicaid-covered service. (Testimony of

10. On , the CMH sent Appellant's legal guardian written notice that the "evaluation for diagnosing addictive illness, and therapy to cover sexual addiction and the Good Life Model that you requested are not covered services under Medicaid." (Respondent's Exhibit E, pages 1-2).

11. Appellant's legal guardian requested a local appeal of that decision and, on , he and Appellant's mother met with . (Respondent's Exhibit F, page 1; Testimony of Appellant's representative; Testimony of).

12. During that meeting, Appellant's parents stated that Appellant had not been diagnosed with sexual addiction, they were not seeking such treatment on her behalf, and that the request should not have been denied on that basis. (Respondent's Exhibit D, page 1; Testimony of Appellant's representative; Testimony of).

13. then clarified that there was no support in the record for a diagnosis of sexual addiction in the information she had received. (Respondent's Exhibit D, page 1; Testimony of).

14. However, also determined that, even if it was not treatment for sexual addiction, the CMH does not provide Good Lives Model therapy and she telephoned Appellant's representative on to inform him of the decision. (Respondent's Exhibit D, page 1; Testimony of

15. On , the CMH also sent Appellant's legal guardian written notice that Andres had upheld the decision denying Appellant's request:

> She determined this therapy "Good Lives Model" is not a service can authorize with Medicaid funding. Michigan Medicaid does not recognize this as a service for Michigan Community Mental Health Service Providers to authorize. Therefore the original denial to deny Good Lives Model has been upheld.

Respondent's Exhibit F, page 1

16. On , the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (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

Additionally,

> 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 also 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…

42 USC 1396n(b)

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.

Among the services that can be provided through the CMH is individual therapy and, with respect to that service, the applicable version of the MPM states:

> **3.12 INDIVIDUAL/GROUP THERAPY**
>
> Treatment activity designed to reduce maladaptive behaviors, maximize behavioral self-control, or restore

> normalized psychological functioning, reality orientation, remotivation, and emotional adjustment, thus enabling improved functioning and more appropriate interpersonal and social relationships. Evidence-based practices such as integrated dual disorder treatment for co-occurring disorders (IDDT/COD) and dialectical behavior therapy (DBT) are included in this coverage. Individual/group therapy is performed by a mental health professional within their scope of practice or a limited licensed master's social worker supervised by a full licensed master's social worker.

MPM, April 1, 2014 version
Mental Health/Substance Abuse Chapter, page 18

Here, the CMH approved Appellant's request for individual therapy, but denied Appellant's request to have that individual therapy consist of Good Lives Model therapy at [redacted] in [redacted]. According to the CMH's first witness, [redacted], and the first adequate action notice sent to Appellant, the request in this case was denied because sexual addiction therapy and Good Lives Model therapy are not covered under policy. According to the CMH's second witness, [redacted], and the second written notice sent to Appellant, while there was no evidence of sexual addiction in this case, the request was still denied because Good Lives Model therapy is not covered under Medicaid.

In response, Appellant's representative testified that he requested Good Lives Model therapy for Appellant because other types of individual therapy have failed Appellant in the past and he wanted to try a new model. He also testified that, while Appellant is exhibiting some inappropriate sexual behaviors, the Good Lives Model therapy would not be sexual addiction therapy and it is a newer evidence-based practice that will positively address Appellant's needs and behaviors.

Appellant bears the ultimate burden of proving by a preponderance of the evidence that the CMH erred in denying his request. However, the CMH also bears the initial burden of going forward with sufficient evidence to show that its action is correct and in accordance with law and policy.

In this case, the undersigned Administrative Law Judge finds that the CMH has failed to meet that initial burden and, consequently, its decision must be reversed.

The CMH's witnesses broadly stated that the Good Lives Model, whether being used to treat sexual addiction or any other issues, is not provided by the CMH or covered by Medicaid. However, neither witness nor the CMH's representative provided any specific support for the determination or identified any specific policy relied upon.

As provided in the above policy, individual therapy broadly encompasses treatment activity designed to reduce maladaptive behaviors, maximize behavioral self-control, or restore normalized psychological functioning in order to enable improved functioning and more appropriate interpersonal and social relationships.

Given that broad coverage and the lack of any specific policy prohibiting the coverage of the Good Lives Model therapy, the CMH's blanket statement that Good Lives Model therapy is not covered is insufficient to meet its burden of production in this case

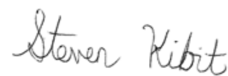
While the undersigned Administrative Law Judge finds that the CMH erred in denying Appellant's request for the reasons identified in the record, it is not clear that the request should ultimately be approved. For example, the witnesses alluded to issues with being enrolled as a Medicaid provider or accepting Medicaid patients, and whether the requested therapy is experimental. Accordingly, the undersigned Administrative Law Judge will only find that the CMH's decision should be reversed and that Appellant's request should be reassessed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly denied Appellant's request for "Good Lives Model" therapy

IT IS THEREFORE ORDERED that:

> Respondent's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for services.



Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed:

Date Mailed:

SK/db

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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.