

**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. 14-016039 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 Appellant's request for a hearing.

After due notice, an in-person hearing was held on ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████, Appellant's father, also testified as a witness for Appellant. Appellant himself was present, but did not participate. ██████████, Assistant Manager of Due Process, represented the Respondent ██████████ County Community Mental Health Authority (██████████ ██████████, Director of Vocational Supports, and ██████████, Compliance Coordinator, from the ██████████, testified as witnesses for ██████████, the ██████████ Manager of Due Process, was also present for the hearing.

ISSUE

Did the ██████████ properly reduce Appellant's Supported/Integrated Employment Services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old Medicaid beneficiary. (Exhibit A, page 7).
2. Appellant previously attended ██████████ ██████████ ██████████ ██████████ ██████████ and, starting in ██████████ he received supported employment and 1:1 job coaching through that school. (Exhibit A, page 13; Testimony of Appellant's representative).
3. The 1:1 job coaching was provided ██████ days per week, ██████ hours a day, at a ██████████ (Exhibit A, page 13; Testimony of Appellant's representative).

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4. Appellant was set to graduate from his school in ██████████ and, at that point, his services through the school would end. (Exhibit A, page 3; Testimony of Appellant's representative; Testimony of ██████████)
5. Accordingly, in ██████████, a meeting was held between Appellant's representative and ██████████ during which they discussed potential services through ██████████, and one of its direct service providers, ██████████ that could be provided when services through the school ended. (Exhibit A, page 3; Testimony of Appellant's representative; Testimony of ██████████).
6. Another meeting was held on ██████████. (Exhibit A, page 3).
7. Appellant graduated in early ██████████. (Exhibit A, page 13).
8. On ██████████, Appellant began receiving services through ██████████ and ██████████ including ██████████ days per week, ██████████ hours per day, of skill-building assistance; ██████████ days per week, ██████████ hours per day, of supported employment/1:1 job coaching at ██████████ Community Living Supports (CLS); and respite care services. (Exhibit A, pages 4, 24; Testimony of Appellant's representative; Testimony of ██████████).
9. On ██████████, a meeting was held involving Appellant's representative, ██████████, staff from ██████████, and others. (Exhibit A, pages 4-5, 7).
10. During that meeting, ██████████ stated that Appellant had been working at ██████████s for ██████████ years and that, while some progress had been made, there was a lack of progress in several areas, including self-starting, and that other supported employment placements would be more appropriate long-term. (Exhibit A, pages 4-5, 7; Testimony of ██████████)
11. She also stated that they needed to look at "fading" out Appellant's 1:1 job coaching and a plan was developed where Appellant's services would remain the same for now, but that ██████████ would start collecting data from ██████████ and documenting Appellant's progress. (Exhibit A, pages 4-5, 7; Testimony of ██████████).
12. ██████████ further noted that the parties would meet again in ██████████ and check on Appellant's progress. If Appellant was able to work independently, he would then transition to independent employment over the next few months. If Appellant was not able to work independently, then he would switch supported employment placements. (Exhibit A, pages 4-5, 7; Testimony of ██████████).

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13. Appellant's representative indicated at that meeting, and at a subsequent meeting with Appellant's supports coordinator on ██████████, that she was unhappy with how ██████████ Vocational Department was handling Appellant's case and that she did not believe Appellant would be able to continue working at ██████████ without supports. (Exhibit A, page 8; Testimony of Appellant's representative).
14. On ██████████, another meeting was held between Appellant's representative, ██████████, staff from ██████████, and others. (Exhibit A, page 10; Testimony of Appellant's representative; Testimony of ██████████).
15. During that meeting, a staff member from ██████████ reported that Appellant continued to require supports and that the management at ██████████ did not believe he could maintain employment at ██████████ without 1:1 job coaching. (Exhibit A, page 10).
16. That staff member also discussed enclave/group supported employment placements available through ██████████. (Exhibit A, page 10).
17. A ██████████ progress note generated by Appellant's supports coordinator after that meeting indicated that ██████████ stated during the meeting that enhanced supports such as 1:1 job coaching cannot continue indefinitely and that there was a ██████████ month maximum on such supports. (Exhibit A, page 10).
18. ██████████ testified during the hearing that she never said there was a maximum amount of time 1:1 job coaching could be provided, but that such services are reviewed every ██████████ months. (Testimony of ██████████).
19. Appellant's representative testified during the hearing both that she was told ██████████ months was typical and that there was a ██████████ month limit. (Testimony of Appellant's representative).
20. ██████████ also decided to begin fading Appellant's supported employment services and to transition Appellant into a group placement. (Exhibit A, page 10; Testimony of Appellant's representative; Testimony of ██████████).
21. Appellant's representative stated that she was dissatisfied with the plan and that Appellant would lose his job without supports. (Exhibit A, page 10; Testimony of Appellant's representative; Testimony of ██████████).

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22. [REDACTED] then developed an Individual Plan of Service (IPOS) for Appellant in which Appellant's 1:1 job coaching would be reduced to [REDACTED] hours per day starting [REDACTED] and terminated completely on [REDACTED]. (Exhibit A, pages 12-13).
23. [REDACTED] also approved an enclave/group supported employment position for Appellant starting [REDACTED]. That position would be [REDACTED] days a week, [REDACTED] hours per day, and Appellant would receive job coaching at a worksite as part of a group. (Exhibit A, page 13; Testimony of Appellant's representative; Testimony of [REDACTED]).
24. Appellant's disagreed with the IPOS and refused to sign it. (Exhibit A, page 13; Testimony of Appellant's representative; Testimony of [REDACTED]).
25. The IPOS informed Appellant and his representative of their grievance and appeal rights with respect to the IPOS. (Exhibit A, pages 29-31).
26. On [REDACTED], the reduction in 1:1 job coaching took effect. (Testimony of Appellant's representative).
27. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1, pages 1-2).
28. Due to that request for hearing, the termination of 1:1 job coaching did not take place as scheduled and Appellant's job coaching has continued at the reduced amount while this matter is pending. (Testimony of Appellant's representative; Testimony of [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

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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, 42 CFR 430.10 states:

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 pursuant to that waiver is Supported/Integrated Employment Services and, with respect to those services, the applicable version of the Medicaid Provider Manual (MPM) states:

17.3.L. SUPPORTED/INTEGRATED EMPLOYMENT SERVICES [RE-NUMBERED & CHANGE MADE 7/1/14]

NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years. **(text added 7/1/14)**

Provide job development, initial and ongoing support services, and activities as identified in the individual plan of services that assist beneficiaries to obtain and maintain paid employment that would otherwise be unachievable without such supports. Support services are provided continuously, intermittently, or on a diminishing basis as needed throughout the period of employment. Capacity to intervene to provide assistance to the individual and/or employer in episodic occurrences of need is included in this service. Supported/ integrated employment must be provided in integrated work settings where the beneficiary works alongside people who do not have disabilities.

Coverage includes:

- Job development, job placement, job coaching, and long-term follow-along services required to maintain employment.
- Consumer-run businesses (e.g., vocational components of Fairweather Lodges, supported self-employment)
- Transportation provided from the beneficiary's place of residence to the site of the supported employment service, among the supported employment sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Employment preparation.

- Services otherwise available to the beneficiary under the Individuals with Disabilities Education Act (IDEA).

*MPM, October 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 137-138
(Internal highlighting omitted)*

However, while Supported/Integrated Employment Services are covered services, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not affect the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Regarding medical necessity, the applicable version of the MPM states:

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;

- that are 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.

*MPM, October 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 12-14*

Moreover, in addition to medical necessity, the MPM also identifies other criteria for B3 supports and services such as skill-building assistance:

SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3s) [CHANGE MADE 7/1/14]

PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and

participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning. NOTE: Certain services found in this section are State Plan EPSDT services when delivered to children birth-21 years, which include community living supports, family support and training (Parent-to-Parent/Parent Support Partner) peer-delivered services, prevention/direct models of parent education and services for children of adults with mental illness, skill building, supports coordination, and supported employment. **(text added 7/1/14)**

17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

* * *

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:

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- 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.

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Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.

*MPM, October 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 119-120
(Internal highlighting omitted)*

Here, as discussed above, ██████████ developed an IPOS for Appellant in which Appellant's 1:1 job coaching would be initially reduced to █ hours per day, █ days per week, for a month before being terminated completely and replaced with an enclave/group supported employment position where Appellant could receive job coaching at a worksite as part of a group.

According to ██████████, the reduction in services from 1:1 job coaching to an enclave/group position was based on the fact that the group position is a more cost-effective method of meeting Appellant's medical needs. In particular, ██████████ testified that, despite receiving 1:1 job coaching for years, Appellant has not been able to independently maintain employment at ██████████ but that he can continue to work toward his goals through shared job coaching and that the enclave position will appropriately meet Appellant's needs at much less cost than 1:1 job coaching.

In response, Appellant's representative testified that Appellant will not be able to continue being employed at ██████████ without 1:1 job coaching. She also testified that Appellant's job at ██████████ has been very valuable for Appellant as it has allowed him to be part of a team; to experience life a more typical working environment, as opposed to a more limited, structured environment; interact with people; learn skills; and gain some financial independence. She further testified that Appellant has only recently started with ██████████ and that he has made progress since doing so, especially since his hours were cut. According to Appellant's representative, Appellant still has room for improvement and can become independent with time, especially given that independence was not a specific goal of the school's services and that Appellant was not necessarily working toward that goal during the years he received services through the school. Appellant's father also testified that it took a long time to get Appellant placed at ██████████ and that Appellant can attain independence if given more time for 1:1 job coaching.

Appellant and his representative have the burden of proving by the preponderance of the evidence that the ██████████ erred in reducing his supported employment services.

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Given the evidence and record in this case, the undersigned Administrative Law Judge finds that Appellant and his representative have failed to meet their burden of proof and that Respondent's actions must therefore be affirmed.

As provided in the above policy, a medically necessary service must be sufficient in amount, scope and duration to reasonably achieve its purpose, but the Respondent may also deny services for which there exists another appropriate, efficacious, less-restrictive and cost-effective service that otherwise satisfies the standards for medically-necessary services.

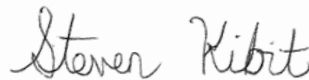
Here, it is undisputed that Appellant needs 1:1 job coaching in order to continue working at his current job with ██████████, but Appellant's witnesses failed to identify any specific medical need to keep that particular job or for 1:1 job coaching in general. Appellant's preference for his current job alone does not establish a medical necessity for 1:1 job coaching and the areas where Appellant still needs improvement can all be properly addressed in a group setting. Moreover, while the exact difference in costs was not identified during the hearing, it is clear that the enclave position would be less costly than 1:1 job coaching and, as the group position can still meet Appellant's needs, it is a more cost-effective method than the 1:1 job coaching. Accordingly, Appellant and his representative have failed to meet their burden of proof and the reduction in services must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the ██████████ properly reduced Appellant's Supported/Integrated Employment Services.

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.



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

Date Signed: ██████████

Date Mailed: ██████████

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cc:



***** 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.