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. 14-014618 CMH

[redacted] [redacted] [redacted]

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 Appellant's behalf.

After due notice, an in-person hearing was held on [redacted], at the offices of the Respondent [redacted] County Community Mental Health (CMH).

[redacted], Appellant's legal guardian, appeared and testified on Appellant's behalf. [redacted], Medical Case Manager, and [redacted], Appellant's previous Medical Case Manager, also testified as witnesses for Appellant. Appellant and [redacted], the Director of Operations at [redacted] were briefly present during the hearing, but neither testified and they left while the hearing was still ongoing.

[redacted], Assistant Corporation Counsel, represented the Respondent CMH. [redacted], Manager, and [redacted], Director, from the CMH's Access Center testified as witnesses for Respondent.

ISSUE

Did the CMH properly deny Appellant's request for adult residential placement?

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 Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area.

2. Appellant is [redacted] year-old female who has been diagnosed with Schizophrenia, disorganized type, and Bipolar I Disorder, most recent episode manic, moderate. (Exhibit A, pages 10, 23).

3. For over [redacted] years, Appellant received services through the CMH, including a Supervised Independent Placement (SIP). (Exhibit A, page 12; Testimony of Appellant's representative).

4. During the time she was placed in a SIP, Appellant had no hospitalizations. (Testimony of Appellant's representative; Testimony of [redacted]; Testimony of [redacted].

5. In [redacted] Appellant's SIP ended. (Testimony of [redacted]).

6. According to [redacted], the placement ended after it was determined that Appellant no longer required residential services. (Testimony of [redacted].

7. According to Appellant's subsequent reports, she lost the placement after her guardian at the time failed to complete the required paperwork. (Exhibit A, page 12).

8. On [redacted], Appellant received a new, court-appointed legal guardian. (Testimony of Appellant's representative).

9. After her placement ended, Appellant moved out of [redacted] County, before returning a few months later. (Testimony of [redacted]; Testimony of [redacted].

10. On [redacted], the CMH conducted an Initial Intake after Appellant requested, at her legal guardian's request, mental health treatment. (Exhibit A, pages 28-49).

11. During that intake, the CMH noted that Appellant was currently living in a home owned by her mother and appeared to be able to live alone without Community Living Supports (CLS). (Exhibit A, pages 37, 48).

12. In response to Appellant's request, the CMH decided to authorize registered nurse services, medication reviews and targeted case management services. (Exhibit A, pages 23, 55; Testimony of [redacted].

13. On [redacted], the CMH conducted a screening after Appellant requested services at a new SIP. (Exhibit A, pages 10-26).

14. During that screening, the CMH noted that Appellant was currently homeless, but that she was independent in self-care tasks such as bathing, grooming, eating, and feeding. (Exhibit A, pages 11-12).

15. The CMH also noted that Appellant was able to maintain a household, complete laundry, and shop for groceries. (Exhibit A, page 12).

16. The CMH further noted that Appellant has a history of noncompliance with her outpatient therapy and medications, and that she requires assistance with medication compliance and attending outpatient therapy treatments. (Exhibit A, page 12).

17. On [redacted], the CMH sent Appellant's guardian written notice that the request for adult residential placement was denied on the basis that "Consumer does not meet criteria for services requested". (Exhibit A, page 6).

18. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this case. (Exhibit A, page 8).

19. On [redacted], MAHS sent out written notice of a telephone hearing scheduled for [redacted].

20. On [redacted], Appellant's representative submitted a request that the hearing be held in-person.

21. On [redacted], MAHS sent out notice of an in-person hearing scheduled for [redacted]

22. While the appeal was pending, Appellant was hospitalized at the [redacted] between [redacted] and [redacted]. (Exhibit A, pages 51-53).

23. Following Appellant's discharge from the hospital, her guardian had her placed at a [redacted] facility. (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 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*

Moreover, 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.

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.

Regarding medical necessity, the applicable version of the Michigan Medicaid Provider Manual (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
(Emphasis added by ALJ)

Moreover, regarding the location of services, the MPM also states in part:

2.3 LOCATION OF SERVICE

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural

> areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.
>
> *MPM, October 1, 2014 version*
> *Mental Health/Substance Abuse Chapter, page 9*
> *(Emphasis added by ALJ)*

Pursuant to the above policies, the CMH has decided to deny Appellant's request for residential placement on the basis that there exists another appropriate, efficacious, and less-restrictive setting where Appellant's medically necessary services could be provided.

Appellant's guardian disputes that denial and, in doing so, bears the burden of proving by a preponderance of the evidence that the CMH erred. In support of Appellant's request, her witnesses testified that, in addition to needing assistance with medications and attending outpatient therapies, Appellant also requires prompting to complete many self-care tasks and monitoring for safety reasons. In particular, Appellant's representative and [redacted]t both noted that, after Appellant was discharged from the SIP, she chose to leave the [redacted] with an unknown man.

Given the evidence in this case, Appellant's guardian has failed to meet that burden of proof and the CMH's decision must be affirmed. Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Appellant, specifically an independent home in the community. It is undisputed that a SIP home, which would include a curfew and some monitoring, is more restrictive than an independent home in the community and the evidence presented at the hearing fails to demonstrate that Appellant requires those greater restrictions.

Appellant primarily needs assistance with medication compliance and attending outpatient therapy treatments, and those needs are undisputed and accounted for by the services authorized in the community by the CMH.

Moreover, while the parties dispute how independent Appellant is in self-care tasks, it appears that, even if Appellant's witnesses' testimony about Appellant's need for prompting to complete many tasks is accepted, any such needs can also be met in a less restrictive setting than the SIP. A need for prompting does not justify a more restrictive setting given the availability of services such as Community Living Supports. The parties discussed some additional options at the hearing and the undersigned Administrative Law Judge would encourage the parties to further pursue these options.

Additionally, to the extent that Appellant's representative and witnesses assert that Appellant requires a residential placement because she needs to be monitored at times, the undersigned Administrative Law Judge finds their testimony to be unpersuasive given the lack of evidence supporting that testimony and the fact that Appellant's current

services have only recently been put in place. Appellant has an undisputed history of noncompliance with her medications and outpatient therapies, but those needs are now being addressed by the services approved by the CMH and, even if Appellant made poor choices between the time she was discharged from the SIP and the time she began receiving services through the CMH again, it cannot be said at this point that those services are unsuccessful or cannot keep Appellant safe. Appellant's services in the community can also be adjusted or increased as appropriate; and Appellant could always re-request a residential placement with new or updated information to the extent it becomes necessary.

The MPM requires that services be provided in the least restrictive, most integrated setting possible, and Appellant's representative has failed to meet the burden of proving by a preponderance of the evidence that a residential placement in this case is a medical necessity in accordance with the Code of Federal Regulations. Accordingly, the CMH's decision is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's request for residential placement.

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

Date Signed: [redacted]

Date Mailed: [redacted]

SK/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.