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

Appellant

Docket No. 14-008915 CMH
Case No.

_______________________/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Appellant's request for a hearing.

After due notice, a hearing commenced on and was continued on . Attorney appeared on Appellant's behalf. , Psychiatrist; , Appellant; , Appellant's mother; , Case Manager; and ; Therapist, were called as witnesses by Appellant. , Family Support Partner; , ARC Community Advocate; and ; Advocate, Community Advocates, appeared on Appellant's behalf but did not testify.

Attorney , Corporate Counsel for Community Mental Health and Substance Abuse Services (CMH or Department), represented the Department. , MA, LLP, QIDP, CCDP-D, Behavioral Health and Waiver Specialist, appeared as a witness for the CMH.

ISSUE

Did CMH properly terminate Appellant's services when it determined that Appellant lacked the capacity to benefit from those 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, born . Appellant is diagnosed with Bipolar Disorder NOS, Mood Disorder Due To General Medical Condition, Anxiety Disorder Due To General Medical Condition, Cognitive Disorder NOS, Impulse Control Disorder NOS, Intermittent Explosive Disorder, Attention Deficit Hyperactivity Disorder NOS, and Learning Disorder. (Exhibit A, p 4; Testimony)

2. Per past MRI's, Appellant has temporal lobe asymmetry and neuropsychological symptoms consistent with a temporal lobe abnormality. Appellant has a severe organic mood disorder with impulse dyscontrol, aggression, cognitive deficits, poor problem solving and very immature defenses for her age. (Exhibit A, pp 4-7; Testimony)

3. Appellant has been receiving case management services, individual therapy, and medication reviews with a psychiatrist through CMH. (Exhibit A, p 17; Testimony)

4. Appellant resides with her mother, twin-sister, and half-brother. (Exhibit A, p 22; Testimony)

5. Following a [redacted] medication review with the psychiatrist, a retrial of the medication Abilify was recommended. Appellant had tried Abilify, as well as numerous other medications in the past. Appellant has had difficulty taking her medications in the past and often refuses to do so. (Exhibit A, pp 4, 8-13, 22; Testimony)

6. On [redacted] a Formal Progress Review was conducted by Joellen Heldt, TLLP, LLPC, with Appellant and her mother. The clinician noted that Appellant had made no progress towards her goals because she did not want to participate in services, but the clinician also noted that Appellant "partially met" all of her goals. The clinician recommended that Appellant continue to receive case management, individual therapy, and medication reviews. (Exhibit A, pp 14-17; Testimony)

7. On [redacted], CMH notified Appellant that her services would be terminated effective [redacted] because Appellant lacked the capacity to benefit from those services. (Exhibit A, p 1; Testimony)

8. Appellant filed a local appeal of the [redacted] notification. On [redacted], CMH upheld its decision to terminate services, finding:

> Rationale: Based on this most recent review, it was noted that Autumn does not demonstrate a "capacity to benefit" from continued Case Management or Psychiatric services as authorized by community mental health. *Lack of Capacity to Benefit* is defined as: Demonstration that the services she is receiving are not significantly successful in helping her to make substantial gains, meet the goals/objectives of her Plan of Service, recover from her symptoms, or improve her daily functioning skills. (Exhibit A, p 2; Testimony)

9. Appellant's request for hearing was received by the Michigan Administrative Hearing System on [redacted]. (Exhibit A, p 2)

10. In preparation for the hearing, CMH requested a utilization review of its decision to terminate services, which was completed by Ellie DeLeon, MA, LLP, QIDP, CCDP-D on [redacted]. [redacted] supported CMH's decision to terminate Appellant's services, noting that Appellant did not participate in case management services and was noncompliant with prescribed medications. (Exhibit A, pp 20-27; Testimony)

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 waiver. Lifeways CMH contracts with the Michigan Department of Community Health to provide specialty mental health services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

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.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.

MPM, Mental Health and Substance Abuse Section, July 1, 2014, pp 12-14

CMH's Behavioral Specialist testified that she is certified as a Qualified Intellectual Disability Professional (QIDP) and that she conducted the utilization review in the instant matter. CMH's Behavioral Specialist indicated that she reviewed Appellant's entire clinical record in conducting the utilization review and that she does recommend that CMH decisions be overturned about 40-50% of the time. CMH's Behavioral Specialist reviewed Appellant's current services and supports and noted that the records indicated that Appellant was doing well working at McDonald's and did well during an incident where a customer yelled at her. CMH's Behavioral Specialist testified that Appellant had been non-compliant with taking her medications, had missed appointments with the psychiatrist and refused AMES testing. CMH's Behavioral Specialist also indicated that Appellant had not participated in case management, that the case manager seemed to be supporting Appellant's mother more than Appellant and that Appellant was not engaged in case management appointments. CMH's Behavioral Specialist testified that she did not see Appellant as a general risk to society, but rather a risk to specific persons, such as her mother, brother, sister, and other students at school. CMH's Behavioral Specialist testified that Appellant's CAFAS score at the time of the review was 90, a level that is on the borderline for persons to be considered eligible for services. CMH's Behavioral Specialist indicated that services were ineffective for Appellant because Appellant would not participate in services. CMH's Behavioral Specialist opined that there might be other, more appropriate, less-restrictive services available for Appellant. CMH's Behavioral Specialist indicated that

Appellant will turn ██ in ██████ and that services should then be more youth guided as she transitions to adulthood.

CMH's Behavioral Specialist indicated that she based her opinion that Appellant was doing well at work on her discussions with staff and documents in Appellant's file, but admitted that there was no information in Appellant's clinical file from her employer because no release was ever provided. CMH's Behavioral Specialist testified that she does not dispute that Appellant has issues but, in her opinion, compared to others who receive the same level of services, Appellant is doing pretty well. CMH's Behavioral Specialist admitted that Appellant has had troubles at school and that she was not attending school outside of the home at the time of her review because of these troubles. CMH's Behavioral Specialist reviewed Appellant's CAFAS scores and admitted that they have varied over the years. CMH's Behavioral Specialist testified that all teens make bad decisions, can be defiant, and that troubles at part-time jobs are common. CMH's Behavioral Specialist admitted that, even on good days, Appellant has to be asked to do things numerous times before she will comply.

Appellant's Psychiatrist testified that she has worked with Appellant on and off since ███ and that she sees Appellant every 6-8 weeks for medication reviews. Appellant's Psychiatrist reviewed Appellant's diagnoses and confirmed that Appellant has had abnormal MRI exams. Appellant's Psychiatrist testified that Appellant is defiant and that it is difficult for her to cooperate, but with a lot of input from her mother, Appellant can cooperate. Appellant's Psychiatrist testified that Appellant has not mastered how to take in information and to listen, especially if the speaker is saying something Appellant disagrees with. Appellant's Psychiatrist indicated that Appellant feels compelled to talk and will often talk right along with the person who is trying to speak to her. Appellant's Psychiatrist testified that she believes Appellant's conditions are primarily neurological, but that her behaviors have also been learned over time. Appellant's Psychiatrist indicated that Appellant's reflexive response is to say no and Appellant also mirrors back what she sees. Appellant's Psychiatrist testified that it takes a good deal of effort to get Appellant to stay for medication reviews, but she does usually stay. Appellant's Psychiatrist indicated that Appellant does have a temporal lobe abnormality. Appellant's Psychiatrist reviewed several instances from Appellant's records where she was initially negative, but eventually followed through with what was asked of her. (Exhibit 1, pp 47, 63, 69, 71-72). Appellant's Psychiatrist indicated that Appellant will often repeat the same answer over and over, even in response to different questions, which is part of her neurological disorder.

Appellant's Psychiatrist testified that Appellant's irritability has to do with her mood, i.e. when her mood is unstable she is uncomfortable in her own skin and becomes very irritable. Appellant's Psychiatrist indicated that most people will return to their baseline mood after becoming irritated or enraged, but it is difficult for Appellant because of her condition. Appellant's Psychiatrist testified that she has tried to prescribe numerous medications for Appellant over the years and that Appellant is currently being prescribed chlorpromazine, which appears to have helped her mood, attention, and concentration a little bit. Appellant's Psychiatrist testified that she has tried Appellant on other mood

stabilizers in the past and Appellant's response has varied from no response to adverse reactions. Appellant's Psychiatrist testified, however, that Appellant has not always taken her medications as prescribed because she does not believe that she needs them. Appellant's Psychiatrist testified that Appellant's conditions are probably more psychiatric than behavioral, but that it was a very difficult determination to make with any certainty. Appellant's Psychiatrist indicated that Appellant's judgment is poor, that she does not make connections between cause and effect, and does not learn from the past. Appellant's Psychiatrist pointed out that Appellant's full scale IQ is only 73 and that she cannot learn from socialization. Appellant's Psychiatrist indicated that Appellant's insight and judgment are consistent with someone half her age. Appellant's Psychiatrist testified that if Appellant says no to services through CMH it is because she does not understand how stopping those services will affect her.

Appellant's Psychiatrist testified that Appellant needs some kind of services, but that regarding the continuation of CMH services, Appellant's Psychiatrist opined that the success of the services depends on the person's ability to participate. Appellant's Psychiatrist testified that Appellant has been obstructive at every step of her treatment and will simply not cooperate. Appellant's Psychiatrist indicated that Appellant has told her repeatedly that when she turns ██, she will no longer participate in services. Appellant's Psychiatrist opined that without services Appellant will end up in the penal system or hospitalized. Appellant's Psychiatrist testified that Appellant showing up for appointments is not enough for services to be effective though; Appellant would actually need to follow-through with services.

Appellant testified that in regards to the instant hearing, she had told her mother repeatedly that she would not attend, but that she did, in fact come to the hearing.

Appellant's mother testified that Appellant is negative about a lot of things, but then does follow through. Appellant's mother testified that Appellant is currently working at ██████ and has worked there for about 3 months. Appellant's mother indicated that Appellant has had issues at work and missed a week of work recently because she failed to call in and get her schedule. Appellant's mother testified that Appellant also had numerous issues when she worked at ██████ and was often sent home from work for behavioral issues. Appellant's mother testified that Appellant has participated in the ████████████, a program for youths involved in the juvenile justice system. Appellant's mother indicated that Appellant did not do well in the program and was ultimately dismissed from it. Appellant's mother testified that Appellant continues to see her therapist, although the therapist was out on maternity leave for a few months towards the end of ███. Appellant's mother testified that sometimes she schedules Appellant's appointments with the therapist, but that sometimes Appellant and the therapist schedule future appointments at the end of sessions. Appellant's mother testified that Appellant uses medical transportation to get to her therapy sessions and that she goes on her own. Appellant's mother testified that Appellant does get very irritable when the therapist is running behind and she has to wait.

Appellant's mother testified that Appellant also goes to appointments with the Psychiatrist, but that she argues about it ahead of time. Appellant's mother indicated that she attends the appointments with the Psychiatrist with Appellant and that, while Appellant argues ahead of time, she does go to the appointments and she does participate. Appellant's mother indicated that Appellant is currently taking the medications prescribed for her by the Psychiatrist. Appellant's mother indicated that Appellant is now back in school, as of [redacted], and has been doing okay. Appellant's mother testified that Appellant takes the city bus to school, with her sister. Appellant's mother indicated that Appellant is not able to make decisions that are in her best interest. Appellant's mother described a recent incident where Appellant ended up hanging out with a group of friends, Appellant's drink was drugged, and she ended up being taken to the hospital. Appellant's mother testified that she believes Appellant's services through CMH are helping her and that the new medication is helping her.

Appellant's Case Manager testified that she worked with Appellant from January to [redacted] and from [redacted] to the present time. Appellant's Case Manager indicated that she normally works with persons with Developmental Disabilities, not persons with Serious Emotional Disturbances, such as Appellant. Appellant's Case Manager indicated that she works to link clients with community resources, assists the family, monitors progress and attends meetings with clients. Appellant's Case Manager testified that in [redacted] she was working with Appellant to get Appellant back into school with the proper accommodations. Appellant's Case Manager testified that currently she is working to rebuild the relationship with Appellant while assisting Appellant with her re-integration into school and her job at [redacted]. Appellant's Case Manager described an incident at school where Appellant became enraged when the Case Manager started discussing Appellant's issues with the school staff. Appellant's Case Manager testified that she has also attended Appellant's most recent medication review with the Psychiatrist.

Appellant's Therapist testified that she has been Appellant's therapist on and off for about a year and a half. Appellant's Therapist indicated that Appellant comes to appointments on her own, which are usually scheduled about once every two weeks. Appellant's Therapist testified that Appellant participates in therapy appointments and is fully engaged. Appellant's Therapist reviewed a letter she authored in the fall of [redacted] where she opined that Appellant was benefitting from services and would continue to benefit going forward. (Exhibit 1, p 1). Appellant's Therapist also opined that disruption in therapy would not be good for Appellant. Appellant's Therapist indicated that she has never spoken to Appellant's Psychiatrist so could not comment on the Psychiatrist's opinion regarding Appellant continuing with services. Appellant's Therapist testified that in general, persons can be referred to their primary care physicians for psychiatric medications.

Based on the evidence presented, CMH properly terminated Appellant's services. As indicated above, all services must be medically necessary, meaning those services are, "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." Here, Appellant has demonstrated a lack of capacity to benefit from services because Appellant had been non-compliant with taking her medications, had missed appointments with the psychiatrist and refused AMES testing. At the time of the action, Appellant had not participated in case management, the case manager seemed to be supporting Appellant's mother more than Appellant and Appellant was not engaged in case management appointments. Also, Appellant's CAFAS score at the time of the review was 90, a level that is on the borderline for persons to be considered eligible for services. As such, given Appellant's refusal to participate in services, it cannot be said that those services would help to treat, ameliorate, diminish or stabilize her symptoms. As such, Appellant no longer meets the medical necessity criteria to receive psychiatric services through CMH.

It bears pointing out that much of the evidence presented at the hearing post-dates the action taken by the CMH in this matter. For example, evidence that Appellant had difficulty at work in is irrelevant to a decision that was made in the prior month. With that said, Appellant's services have continued since the negative action, so Appellant's participation in those services is somewhat relevant to whether Appellant would benefit from services. Having reviewed that evidence, however, it does not appear that Appellant's participation and engagement in services has improved much since . It does appear that Appellant's most recently prescribed medication may be helping her, but she can obtain that medication from her primary care physician. In addition, should Appellant's condition worsen, or should she decide that she does want to fully participate in services, she can always request a new evaluation.

The burden is on Appellant to prove by a preponderance of evidence that psychiatric services are still medically necessary. As indicated above, Appellant did not meet this burden.

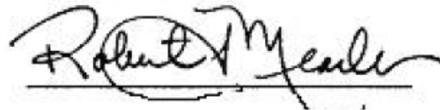
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The CMH properly terminated Appellant's psychiatric services.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

cc:

RJM/

Date Signed:

Date Mailed:

***** 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.