

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 14-018512 CMH
Case No. ██████████

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 Case Manager at ██████████ of ██████████ ("██████████"), appeared and testified on Appellant's behalf. Appellant; ██████████, the Director of ██████████; and ██████████, Vocational Technician at ██████████; also testified as witnesses for Appellant. ██████████, Medicaid Fair Hearings Officer, represented the Respondent ██████████ County Community Mental Health Authority ("CMH"). Dr. ██████████, the Medical Director at ██████████ Community Health (██████████), also testified as a witness for Respondent.

ISSUE

Did the CMH properly terminate Appellant's skill-building assistance?

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 who has been diagnosed with schizoaffective disorder and who lives in an Adult Foster Care ("AFC") home. (Exhibit A, pages 1, 7, 18).
2. Since approximately ██████████, Appellant has been receiving services through the CMH and ██████████, which is her assigned Manager of Comprehensive Provider Networks ("MCPN"). (Exhibit A, page 20).
3. As part of her services, Appellant has received skill-building assistance at ██████████. (Exhibit A, pages 20-21).
4. The skill-building services were originally approved for 3 days per week.

(Testimony of Appellant's representative; Testimony of Dr. ██████████).

5. However, in ██████████, ██████████ decided to reduce Appellant's skill-building assistance to 2 days a week. (Testimony of Dr. ██████████).
6. Appellant appealed ██████████'s decision and an administrative hearing was held, with Administrative Law Judge ██████████ subsequently issuing a Decision and Order affirming the reduction in skill-building assistance. (Testimony of Appellant's representative; Testimony of Dr. ██████████).
7. On ██████████, a meeting was held between Appellant and ██████████ staff with respect to transitioning Appellant from skill-building assistance to a ██████████ program. (Exhibit A, pages 20-21).
8. Appellant refused to sign any transition plan during that meeting and indicated that she wanted to continue to receive skill-building assistance at ██████████. (Exhibit A, pages 20-21).
9. However, ██████████ determined that Appellant's skill-building assistance should be terminated because, while she continues to require assistance in employability skills, Appellant has been receiving the services for years and has benefitted as much as she can from the skill-building assistance. (Exhibit A, pages 20-21; Testimony of Dr. ██████████).
10. On ██████████, ██████████ sent Appellant written notice that her skill-building assistance would be terminated effective ██████████. (Testimony of Dr. ██████████).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1, pages 1-4).
12. In that request, Appellant indicated that she was being moved to a ██████████ program without her request or approval. (Exhibit 1, pages 1-4).

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, 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 skill-building assistance and, with respect to that service, the applicable version of the Medicaid Provider Manual (MPM) states:

**17.3.J. SKILL-BUILDING ASSISTANCE [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)**

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.

*MPM, October 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 134-135
(Internal highlighting omitted)*

However, while CLS is a covered service, 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:

- 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.

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.

(Internal highlighting omitted)

Here, as testified by Dr. ██████████, ██████████ determined that Appellant's skill-building assistance should be terminated because she has received such assistance since ██████████ and, while she has made some progress toward her treatment goals, she has also benefitted as much as she can from the skill-building assistance. According to Dr. ██████████, the appropriate level of care for Appellant can and should be provided at a ██████████ or ██████████. He further indicated that his decision was supported by the clinical information received from another of Appellant's service providers, ██████████, who in turn received its information from ██████████.

In response, the witnesses from ██████████ all testified that, while Appellant has not reached all her treatment goals, she has made significant progress and, given where she started, it understandably took years to get her to the point she is at now, especially in the areas of physical fitness and self-confidence. ██████████ also testified that Appellant is constantly meeting goals and having new goals set, and that he worries that she would not engage in any activities if her skill-building services are taken away. Appellant herself further testified that the staff at ██████████ has treated her with respect and fairness, and that she wants to continue receiving services there.

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the CMH ██████████ erred in terminating her skill-building assistance.

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

Skill-building assistance consists of activities that assist a beneficiary to increase her economic self-sufficiency or to engage in meaningful activities such as school, work or volunteering, and, as stated in the above policy, any medical necessary skill-building services should be sufficient to reasonably achieve their intended purpose. Here, Appellant has been receiving skill-building assistance since ██████████ and some progress has been made, but Dr. ██████████ also properly noted that the skill-building program is not intended to be a permanent job for Appellant and that, given the years of assistance she has already received, she has benefitted from the assistance as much as she can. Moreover, while Appellant's witnesses testified that more skill-building assistance is needed and that it is an ongoing process of meeting goals and setting new goals, they did not provide any evidentiary support regarding specific goals or even address if or when they believed Appellant could ever transition out of their skill-building program.

Additionally, the specific reasons that were identified by Appellant and her witnesses for continuing the services are insufficient to meet their burden of proof. For example, it is undisputed that Appellant wishes to continue services with ██████████ and the

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above policy specifically provides that, in making decisions regarding B3 services such as skill-building assistance, care should be taken to insure that the goals developed are those of the beneficiary. However, Appellant's desires are not dispositive and she is still only entitled to medically necessary services. Moreover, the fact that the staff at ██████████ Industries treats her fairly and with respect does not demonstrate a medical necessity for services.

Similarly, the concerns raised by ██████████ that Appellant would not do anything if the skill-building services are taken away also fails to demonstrate a medical necessity for the services. Skill-building assistance is authorized for the specific reasons outlined in the above policy and not simply to fill Appellant's time or give her something to do.

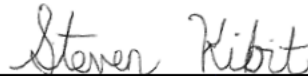
Accordingly, the undersigned Administrative Law Judge finds that Appellant and her representative have failed to meet their burden of proof and that Respondent's decision to terminate skill-building assistance must therefore be sustained.

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 skill-building assistance.

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: ██████████

SK ██████████

cc: ██████████
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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.