

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-012644 CMH

██████████ ██████████

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, a telephone hearing was held on ██████████ ██████████, Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. Appellant; ██████████, Appellant's sister; and ██████████ Appellant's Clinical Case Manager; also testified as witnesses for Appellant. ██████████ Assistant Corporation Counsel, represented the Respondent ██████████ ██████████ (CMH). ██████████, Access Center Office Manager, testified as a witness for the CMH.

ISSUE

Did Respondent properly deny Appellant's request for continuation of her 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. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with schizoaffective disorder. (Exhibit A, page 10; Testimony of Appellant's mother; Testimony of CMH's witness).
2. For the past ██████ years, Appellant has been receiving services through the CMH while living in a Community Living Facility (CLF) adult residential placement, including clubhouse services; community living supports (CLS); medication reviews; targeted case management; and registered nurse services. (Testimony of CMH's witness).

Docket No. 15-012644 CMH
Decision and Order

3. On [REDACTED], a person-centered planning meeting was held regarding Appellant's services for the upcoming year, [REDACTED] through [REDACTED] (Exhibit A, page 10).
4. The meeting was attended by Appellant; her mother; her home's manager; her case manager at the time; the case manager's supervisor; and a registered nurse. (Exhibit A, page 21).
5. During that meeting, Appellant and her mother requested that Appellant continue with her adult residential placement during the next year. (Testimony of Appellant's mother).
6. In the subsequent person-centered plan (PCP) that was developed, with an effective date of [REDACTED] it was noted that Appellant completes her hygiene, grooming and other personal care independently. (Exhibit A, page 10).
7. However, it was also noted that Appellant is able to interact respectfully when limits are set, but that she remains noncompliant with the goals of her home's program and its household rules; she generally does not follow through with attending group therapy; she will only attend community activities planned and supervised by staff at times; she was recently terminated from her drop in program due to stealing and begging behaviors; and that she is noncompliant in areas of self-improvement, such as cooking and shopping. (Exhibit A, pages 10, 18).
8. It was further noted in the PCP that Appellant refuses to work with a behavior specialist and that, while she states that she will try new aspects of the home's program, there has been little follow through historically. (Exhibit A, page 18).
9. The PCP identified four goals for Appellant, including (1) a health and safety goal based on Appellant's current level of functioning; (2) a goal of continuing to be healthier; (3) a goal of increasing Appellant's ability to adequately, respectfully and more independently participate with programming for safety and health; and (4) a goal of learning how to take her medications independently. (Exhibit A, pages 11-18).
10. In discussing those goals, the plan again noted that Appellant had been noncompliant in the past and that she agreed to work on her meal preparation once a week; treating others respectfully; scheduling appointments with doctors, with staff support as needed; learning about her medications; cooperating with programming; meeting with a behavioral psychologist; and participating in group therapy. (Exhibit A, pages 11-18).

Docket No. 15-012644 CMH
Decision and Order

11. The PCP further provided that Appellant would continue to receive her supports in the CLF placement for another [REDACTED] days. (Exhibit A, page 19).
12. However, on [REDACTED] the CMH sent Appellant written notice that her request for 1 [REDACTED] days of adult residential placement had been denied and that only [REDACTED] days of the placement were approved. (Exhibit A, page 6).
13. Regarding the reason for the action, the notice stated: "Documentation submitted does not justify requested services". (Exhibit A, page 6).
14. On [REDACTED], Appellant's guardian requested a local dispute resolution hearing. (Exhibit A, page 26).
15. On [REDACTED], the local dispute resolution hearing was held. (Exhibit A, page 26).
16. On [REDACTED], the hearing officer issued a decision upholding the decision. (Exhibit A, pages 26-30).
17. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter with respect to that denial. (Exhibit A, page 8).

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 statutes, 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

Docket No. 15-012644 CMH
Decision and Order

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 Health and Human Services (DHHS) 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 the location of such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) 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, January 1, 2015 version
Mental Health/Substance Abuse Chapter, page 9

Moreover, regarding medical necessity, the MPM also 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, January 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 12-14
(Emphasis added)*

Here, the CMH denied Appellant's request for continuation of her adult residential placement in a CLF. Regarding the reason for the action, the notice stated: "Documentation submitted does not justify requested services". In support of that decision, the CMH's Access Center Office Manager testified that while Appellant's current placement is in a CLF and that the facility's goals are to provide treatment and training for Appellant on a temporary basis while Appellant stabilizes and/or acquires skills, the documentation submitted to the CMH demonstrated that Appellant has been noncompliant with the programming of that specialized residential setting and is not working toward her goals. The CMH's witness also testified that Appellant must be working on the treatment and training goals of the CLF placement in order to need the placement and, as she is not, the placement is no longer justified. The CMH's witness further testified that, because Appellant does not require around-the-clock care and is independent in her activities of daily living, her needs can be met in a less restrictive environment, such as a general Adult Foster Care (AFC) home with appropriate supports.

In response, Appellant's mother testified that Appellant needs the stability and supervision provided by her current placement, and that Appellant is not emotionally ready to be in her own apartment. She also took issue with many of the statements made in the PCP and testified that Appellant does her own medications, participates in her cooking day, goes to the day program, and has gone grocery shopping. Appellant's mother further testified that the facility does not really have any activities and that Appellant does everything she is told to do there.

Appellant's sister similarly testified that Appellant will do what she is told, but that she needs supervision and a program to follow.

Docket No. 15-012644 CMH
Decision and Order

Appellant's current case manager also testified that Appellant's current placement is the most appropriate and least restrictive environment that can meet Appellant's needs and that she is still working on activities such as medications and money management. He also testified that, since he has taken over Appellant's case, which was after the decision at issue in this case, Appellant has been participating in the CLF's programming.

Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her request for continuation of her adult residential placement. Moreover, the undersigned Administrative Law Judge is limited to reviewing the CMH's decision in light of the information available at the time the decision was made.

Given the evidence and applicable policies in this case, Appellant has failed to meet her burden of proof and the CMH's decision must be affirmed. It is undisputed that Appellant continues to need services through the CMH, including medication reviews, targeted case management and CLS, but it also appears that those needs could be met in a less restrictive environment, such as an AFC home. It is undisputed that an AFC home would be less restrictive than the CLF and the evidence presented at the hearing fails to demonstrate that Appellant requires the greater restrictions of a CLF.

As credibly testified to by the CMH's witness, while Appellant's placement in a CLF was specifically made for additional temporary treatment and training while Appellant acquired new skills, the documentation submitted to the CMH demonstrated that Appellant has been noncompliant with the programming of the CLF and was not working toward her goals, which suggests that a continued placement is neither necessary nor appropriate. Appellant's mother and sister dispute the statements made in the PCP regarding Appellant's noncompliance with the CLF's program, but their testimony is unsupported and it is also not clear if they, like Appellant's case manager, were only referring to Appellant's behavior after the decision at issue in this case was made rather than Appellant's behavior at the time of the person-centered planning meeting.

Moreover, to the extent Appellant's representative argues that Appellant is not ready for her own independent apartment, that argument must also be rejected as the CMH is not suggesting that Appellant live independently in her own apartment. Instead, the CMH has suggested that Appellant move to an AFC home or someplace similar, where she could continue to receive services such as medication reviews, targeted case management, and CLS.

The additional training and treatment offered at the CLF may be beneficial to Appellant, if she was using them, but the standard in this case is what is medically necessary for Appellant and, 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. Appellant bears the burden of proving by a preponderance of the

Docket No. 15-012644 CMH
Decision and Order

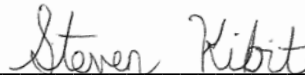
evidence that the adult residential placement is a medical necessity in accordance with the Code of Federal Regulations and Michigan Medicaid policy, but she has not met that burden and the CMH's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent both properly deny Appellant's request for continuation of her adult residential placement.

IT IS THEREFORE ORDERED that:

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



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

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.