STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 373-4147

IN THE MATTER OF

Appellant

Docket No. 15-015134 CMH

______________________/

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 The Appellant appeared and offered testimony on her own behalf. Case Manager from appeared as a witness for the Appellant. appeared on behalf of the Respondent (CMH). L.M.S.W. Contract Manager from appeared as a witness for CMH.

ISSUE

Did CMH properly deny the Appellant Individual Therapy 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 enrolled with CMH and diagnosed with schizoaffective disorder, anxiety disorder and personality disorder. (Exhibit A, pp 2, 14)

2. From through and through , the Appellant was approved for individual therapy from During the approved time period, only submitted 1 claim for payment for service. (Exhibit A, p 2; Testimony)

3. On [redacted] submitted to CMH a request for individual therapy on behalf of the Appellant. (Exhibit A, pp 2, 13-16; Testimony)

4. The [redacted], request included a letter from a psychiatrist. The letter recommended therapy but did not delineate a preference between group therapy or individual therapy. (Exhibit A, pp 2, 3, 16; Testimony)

5. On or around [redacted] reviewed the [redacted] request and determined the needs outlined in the request could be addressed through group therapy and that there had not been any evidence of a dependency or continued need for individual therapy. (Exhibit A, p 3; Testimony)

6. On [redacted], CMH sent the Appellant a Medicaid notice of action form. The form indicated individual therapy was being denied for lack of medical necessity. (Exhibit A, pp 9-12; Testimony)

7. On [redacted], the Michigan Administrative Hearing System received the Appellant's request for hearing. (Exhibit A, pp 5-6)

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. [redacted] 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.

3.12 INDIVIDUAL/GROUP THERAPY

Treatment activity designed to reduce maladaptive behaviors, maximize behavioral self-control, or restore normalized psychological functioning, reality orientation, remotivation, and emotional adjustment, thus enabling improved functioning and more appropriate interpersonal and social relationships. Evidence based practices such as integrated dual disorder treatment for co-occurring disorders (IDDT/COD) and dialectical behavior therapy (DBT) are included in this coverage. Individual/group therapy is performed by a mental health professional within their scope of practice or a limited licensed master's social worker supervised by a full licensed master's social worker.

MPM, Mental Health and Substance Abuse Section, July 1, 2014, pp 12-14, 18.

CMH's witness testified that upon review of the Appellant's file and the individual therapy request, she determined individual therapy was not medically necessary and that Appellant's needs could be met through group therapy. The CMH witness indicated that there was no record of past group therapy; no evidence of any actual conflict with group therapy and no evidence of any immediate risk as a result of group therapy.

The Appellant and her witness testified to there being possible issues with group therapy. However, the witnesses both acknowledged that the information pertaining to those possible issues were not communicated to CMH prior to or contemporaneous to CMH's decision to deny individual therapy.

Based on the evidence presented, CMH properly denied the Appellant's request for individual therapy. 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 at the time of the request and based upon the information made available to the CMH, the Appellant did not require individual therapy as group therapy would satisfy the Appellant's needs.

The burden is on Appellant to prove by a preponderance of evidence that individual therapy was medically necessary based upon the information provided to CMH at the time the decision was made to deny services. As indicated above, Appellant did not meet this burden.

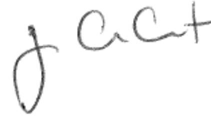
DECISION AND ORDER

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

The CMH properly denied Appellant's request for individual therapy.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.



Corey Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

Date Mailed:

Date Mailed:

CAA/db

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.