



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-002592
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on [REDACTED] [REDACTED] Petitioner's case manager, appeared and testified on Petitioner's behalf. Petitioner also testified on her own behalf. [REDACTED], Manager of Due Process, represented the Respondent [REDACTED]. [REDACTED], a Psychologist with Respondent's Utilization Management, testified as a witness for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request for 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. Petitioner is a [REDACTED] year-old Medicaid beneficiary who has been diagnosed with major depressive disorder, recurrent and unspecified, and generalized anxiety disorder. (Exhibit A, pages 10, 49).
2. Petitioner has been approved for and receiving services through Respondent, including targeted case management, medication reviews, and individual therapy. (Exhibit A, pages 23-24).
3. Petitioner's services are approved pursuant to her Individual Plan of Service (IPOS). (Exhibit A, pages 10-24).

4. Goals identified as part of Petitioner's most recent (IPOS), for the time period of [REDACTED] through [REDACTED], include maintaining Petitioner's mental health stability; maintaining or improving her physical health; and maintaining or improving her participation in meaningful activities in the community. (Exhibit A, pages 10-24).
5. With respect to that first goal, Petitioner's IPOS also notes that she needs to develop coping skills for her anxiety and depression, and that she wanted to get back to work, like when she worked a [REDACTED] years before. (Exhibit A, page 14).
6. The IPOS further noted that Petitioner operates and lives alone in the community, but stays in at night. (Exhibit A, pages 11-12).
7. An [REDACTED] Progress Note continued to find that Petitioner reports a need to get out and participate in the community, and that she also wants to lose weight and get a job. (Exhibit A, page 56).
8. A [REDACTED] Progress Note likewise provided that Petitioner was continuing to work with her therapist and would like to focus on lowering and managing her anxiety outside of the home. (Exhibit A, page 61).
9. During a [REDACTED] [REDACTED] [REDACTED] Psychosocial Assessment Review, Petitioner's representative noted that Petitioner does not currently participate in many meaningful activities, but that she is interested in signing up for skill-building assistance at "[REDACTED]" because she enjoys crafting and is looking forward to getting out of the house. (Exhibit A, page 48).
10. Petitioner's representative also noted that she will assist Petitioner in requesting skill-building assistance and that Petitioner's current symptoms prevent her from working. (Exhibit A, pages 48, 50).
11. Petitioner's representative then scheduled a tour for Petitioner at [REDACTED] [REDACTED], which was completed on [REDACTED]. (Exhibit A, pages 64, 67, 71).
12. Following the tour, Petitioner's representative noted that Petitioner was excited to work at Freedom Works for one to two days a week in order to see if Petitioner could handle her anxiety. (Exhibit A, page 71).
13. Respondent subsequently received a request for skill-building assistance submitted on Petitioner's behalf. (Testimony of Respondent's Psychologist).

14. On [REDACTED], Respondent sent Petitioner written notice that the request for skill-building assistance was denied. (Exhibit 1, pages 3-5; Exhibit A, pages 1-3).
15. Regarding the reason for the denial, the notice stated that the medical necessity for employment and skill building was not met at this time. (Exhibit 1, page 3; Exhibit A, page 1).
16. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner and her representative with respect to that denial. (Exhibit 1, pages 1-5).
17. In that request, they assert that the requested skill-building assistance would help Petitioner get out of the house, lose weight, learn a skill, lessen her anxiety and improve her people skills. (Exhibit 1, page 2).
18. In addition to her request for hearing, Petitioner also subsequently submitted a letter from her therapist in which the therapist stated that, while Petitioner has frequently expressed to him a desire to work, she continues to have barriers to employment, including frequent panic attacks and a need for frequent bathroom breaks due to her anxiety, and that he believed [REDACTED] could help her by providing a supportive environment outside of her home where she could gradually increase her tolerance to stress. (Exhibit 2, page 1).

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

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...

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) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

Here, as discussed above, Petitioner requested skill-building assistance through Respondent. With respect to that service, the Medicaid Provider Manual (MPM) provides:

17.3.J. SKILL-BUILDING ASSISTANCE

NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years.

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, January 1, 2016 version
Mental Health/Substance Abuse Chapter, pages 134-135*

However, while skill-building assistance 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 MPM also provides:

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.

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)

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.

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 . . .

*MPM, January 1, 2016 version
Mental Health/Substance Abuse Chapter, pages 119-120*

Here, Respondent denied Petitioner's request for skill-building assistance pursuant to the above policies.

In support of that decision, Respondent's psychologist testified that, while Petitioner's anxiety may present her from working as she had in the past, her issues with anxiety are more appropriately addressed through services such as outpatient therapy. Respondent's psychologist also testified that the help with socialization that Petitioner seeks is not a primary function of skill-building assistance. Respondent's representative also testified that skill-building assistance is not job-specific.¹

In response, Petitioner's representative testified that, while Petitioner has been working with therapist for [REDACTED] years, Petitioner continues to have anxiety issues and barriers preventing her from working. Petitioner's representative also testified that both she and Petitioner's therapist feel like skill-building assistance would benefit Petitioner. Petitioner's representative further noted that, while Petitioner has worked at jobs before, that was long ago and before Petitioner's current diagnoses/symptoms. She also testified that, while she has not attempted to link Petitioner up with [REDACTED], the requested skill-building assistance would be a gateway to employment and a place where Petitioner would be in an employment setting and taking directions. Petitioner also testified that any regular job would be too stressful for her, and that she has never had a job that required skills and would like to learn something like a trade.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying the request for skill-building assistance.

Given the record and available information in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof. Petitioner undisputedly wants to work and her anxiety, especially around groups of people and out

¹ As briefly noted by Respondent during the hearing, in order to be approved for skill-building assistance, it must have documentation that Petitioner is not currently eligible for sheltered work services provided by MRS and there is no such documentation in this case. However, that was not the basis for the denial in this case.

in public, is a barrier to doing so. However, while the requested skill-building assistance can include assistance with the acquisition, retention, or improvement in the areas of socialization and adaptive skills, assisting with anxiety is not the primary purpose of skill-building assistance and Petitioner does not need any assistance with other adaptive skills training or work preparatory services. Similarly, while Petitioner expressed that she wanted skill-building assistance in part because she wanted to learn skills or a trade, that is also not the purpose of skill-building assistance as, per policy, the services are not job task-oriented and instead are focused on general skills that it does not appear Petitioner needs.

Moreover, to the extent skill-building assistance would even be appropriate for Petitioner, the undersigned Administrative Law Judge agrees with Respondent's argument that Petitioner's needs are better met through other services, such as outpatient therapy or Community Living Supports (CLS), and that addressing Petitioner's anxiety and need for community inclusion through those services is more beneficial and suitable. Per policy, B3 services such as skill-building assistance are not intended to meet all of an individual's needs or preferences and some needs may be better met by community and other natural supports, which is the case here.

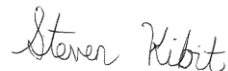
Accordingly, as Petitioner has failed to meet her burden of proving by a preponderance of the evidence that Respondent erred, the undersigned Administrative Law Judge also finds that Respondent's decision to deny Petitioner's request for skill-building assistance must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for skill-building assistance.

IT IS THEREFORE ORDERED that

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



SK/db

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

[REDACTED]

[REDACTED]
[REDACTED]
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