

Disability Rights California

MEMORANDUM

TO: Mental Health Consumers, Family Members, Advocates, Providers

FROM: Daniel Brzovic and Mike Stortz

RE: Individual Mental Health Rehabilitation Services

DATE: June 4, 2001 (Revised September 29, 2006)

A California Superior Court judge has ruled that individual Mental Health Rehabilitation Services are available under the Medi-Cal program without any cap on the number of hours per day or days per week that the service can be provided. (See Attachment 1, San Francisco Superior Court judgment in the case of *Hale v. Belshé*.)

Individual Mental Health Rehabilitation Services include services to assist a client in improving, maintaining or restoring various community living skills such as functional skills, daily living skills, social skills, and leisure skills. These services can be particularly helpful in enabling individuals to transition to residence in the community following long periods of institutionalization. The services can enable individuals to remain in the community and avoid unnecessary hospitalization or institutionalization.

This memo is to assist you in accessing individual Mental Health Rehabilitation services for yourself, a relative, friend, or client. Please call Disability Rights California at 1-800-776-5746 for further information.

What Are Mental Health Rehabilitation Services?

Mental Health Rehabilitation Services are service activities provided to assist an individual or group of individuals to improve, maintain or restore functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources; and/or medication education. The service is covered under the Medi-Cal program. Cal. Code Regs. tit. 9, §§ 1810.227, 1810.243, DMH Letter 01-01, May 4, 2001 (Attachment 2).

Who Can Benefit From Individual Mental Health Rehabilitation Services?

The services are for the purpose of enabling individuals to live in the community and avoid inpatient hospitalization or long-term institutionalization. The following are some examples of individuals who can benefit from the service:

Individuals who are transitioning from institutions into the community and who need assistance in adjusting to or readjusting to independent living.

Individuals who are attempting to avoid hospitalization or institutional placement. Conservatorship investigators and the courts have a duty to consider all available alternatives to placement in a locked facility, and to place an individual in the least restrictive environment. These services can provide the supports necessary to avoid restrictive placements.

Individuals who are attempting to prove that they are not "gravely disabled" and, therefore, should not be under LPS conservatorship. Individual Mental Health Rehabilitation and other Medi-Cal covered mental health services may be used to assist an individual to obtain food, shelter and clothing so that s/he is not legally considered to be gravely disabled.

Individuals who do not fit into existing, "cookie cutter" programs and who respond better to one-on-one assistance.

Can Mental Health Rehabilitation services be provided on a voluntary basis?

Yes. Individuals cannot be forced to receive Medi-Cal services or other medical services except pursuant to various specific involuntary treatment provisions of the Lanterman Petris Short Act (LPS) or the Probate Code. Those forced treatment laws do not prevent an individual from receiving voluntary mental health services. Welf. & Inst. Code § 5003. In addition, individuals have a right to refuse individual Mental Health Rehabilitation Services if they do not want them. As with all Medi-Cal mental health services, Individual Mental Health Rehabilitation must be provided pursuant to an individual service plan. The plan must be developed in consultation with the client, and agreed to by the client. The service planning process should be client directed. *See Medi-Cal Mental Health Managed Care (Disability Rights California 1999).*

Can Mental Health Rehabilitation Services Be Provided On An Individual Basis?

Yes. Mental Health Rehabilitation services can be provided on a one-on-one basis or to a group. *See Superior Court judgment in Hale v. Belshe (Attachment 1).* An individual can receive such assistance at home, work place, or anywhere s/he needs to

improve, maintain or restore skills. *See* Cal. Code Regs. tit. 9, § 1840.324, DMH Letter 01-01, May 4, 2001 (Attachment 2)

Does This Differ From Personal Care/In-Home Support Services?

Yes. Individual Mental Health Rehabilitation services assist a beneficiary in improving, maintaining or restoring skills. Attendant care services such as Personal Care Services Program/In-Home Supportive Services (PCSP/IHSS) provide assistance for the beneficiary, but are not necessarily designed to improve, maintain or restore skills.

What Is An Example of Individual Mental Health Rehabilitation Services?

Individual Mental Health Rehabilitation includes assisting a beneficiary in using public transportation; developing relationships with landlords, neighbors, co-workers and employers; learning how to shop; developing social activities and recreation in the community, and other activities of daily living.

Are There Requirements For Such Assistance?

Yes. Individual Mental Health Rehabilitation must be directed at the individual's *goals* of rehabilitation or recovery. Cal. Code Regs., tit. 9, §§ 1810.227, 1810.243. There is no cap or limit on the duration of the service as long as the service is directed toward the *goal* of rehabilitation or recovery, including maintenance of current level of functioning. There is no cap or limit on the amount of assistance provided per day, per week, per year, or over the course of a lifetime. (See judgment of the Superior Court in *Hale v. Belshe*, Attachment 1, and DMH Letter 01-01, May 4, 2001, Attachment 2.) The service must be provided in accordance with the medical necessity criteria that apply to all outpatient Medi-Cal mental health services provided through MHPs.

What Is Medical Necessity?

Medical necessity is the criteria used to determine whether any mental health service (whether voluntary or involuntary) is reimbursed under the Medi-Cal program. There are four basic medical necessity criteria for county Mental Health Plan (MHP) services: (1) the person must have an *included diagnosis*, (2) the service must address a *significant impairment* in an important area of the person's life, (3) the service is expected to *significantly reduce* the impairment or *prevent significant deterioration* in an important area of the person's life, and (4) a physical health provider cannot appropriately meet the person's needs. Cal. Code Regs., tit. 9, §§ 1830.205 (individuals over age 21), 1830.210 (individuals under age 21). (There are questions

about whether these definitions of medical necessity comply with state and federal law. That subject is beyond the scope of this memo.) *See, Medi-Cal Mental Health Managed Care (PAI 1999).*

Can I Receive Mental Health Rehabilitation In Addition To Other Services?

Yes. The service can be provided in combination with other services as long as there is no duplication. For example, a beneficiary can receive a mix of group Day Rehabilitation and individual Mental Health Rehabilitation appropriate to individual need. An individual who receives PCSP/IHSS could also receive individual Mental Health Rehabilitation. If a beneficiary has a dual mental health and developmental diagnosis, the beneficiary can receive services from both the Regional Center and County Mental Health services systems. Contact your county MHP for more information on covered services. The county MHP can provide you with a brochure that describes the services covered by Medi-Cal. Cal. Code Regs. tit. 9, § 1810.360. A list of the Medi-Cal services that each county MHP is required to provide can be found at Cal. Code Regs. tit. 9, § 1810.247. *See Medi-Cal Mental Health Managed Care (PAI 1999).*

Can I Choose My Own Provider?

Yes. As with any Medi-Cal service, the County Mental Health Plan must allow you to choose between at least two providers. Cal. Code Regs. tit. 9, § 1830.225. If you want a particular provider who does not have a contract with the county MHP, you will have to work with the county MHP to arrange for a county contract with that provider.

Who Can Provide Individual Mental Health Rehabilitation Services?

The direct provider of individual Mental Health Rehabilitation services does not have to be a licensed professional. Cal. Code Regs, tit. 9, § 1840.344. But the direct provider would need to work under the direction of a licensed health care provider. DMH Letter 01-02, May 4, 2001 (Attachment 3). At the discretion of the county, providers can include social workers, peer and self-advocacy organizations, drop-in centers, family members or friends.

What Are The Language And Cultural Competence Requirements For Providers?

Like all Medi-Cal services, Mental Health Services must be provided in a culturally competent manner in your primary language, including sign language. Cal. Code Regs. tit. 9, §§ 1810.410, 1810.211.

How Much Can A Provider Be Paid?

An individual provider could expect to be paid market rates as determined by the county. Rates cannot exceed the maximum rate. The current maximum rate for Medi-Cal Mental Health Services, including Rehabilitation Services, is about \$151.20 an hour. *See DMH Letter Number 05-07.*

How Do I Get Individual Mental Health Rehabilitation?

Contact your county Mental Health Plan, your service provider or your county Patients' Rights Advocate. You can contact the county mental health plan (MHP) by calling the 1-800 access telephone number for the county MHP where you live. You should request an *assessment* to obtain Individual Mental Health Rehabilitation. The assessment should be in person rather than over the telephone. It would be helpful also to get the name and title of the person on the 1-800 access line. It is very important that you write down the date you called and what you were told. And save this information for your records.

Can I Do Anything If My Request Is Denied?

Yes. There are several things you can do if the MHP denies your request for individual Mental Health Rehabilitation, or for an in person assessment, or determines after assessment that you are not eligible for the service. One thing you can do is ask for a second opinion. Cal. Code Regs. tit. 9, § 1810.405(e). You can also appeal the denial. Cal. Code Regs. tit. 9, §§ 1850.207 and 1850.208. You can file an appeal with the MHP. Cal. Code Regs. tit. 9, § 1850.205.

If your appeal is denied (or if the MHP fails to act on your request for an appeal) you can request a state fair hearing. Cal. Code Regs. tit. 9, §§ 1850.207(d), 1850.213. No matter which route you choose, you cannot request a state fair hearing more than 90 days after the date you receive written notice that the service has been denied. 42 CFR. § 431.221(d). *See Medi-Cal Mental Health Managed Care (PAI 1999).*

Can I Do Anything If The Service Is Terminated, Reduced Or Suspended?

Yes. Once you are receiving a Medi-Cal mental health service, you have a right to written notice at least *10 days* prior to the termination, reduction or suspension of that service. The notice must explain what the county is doing and why, and how you can appeal the decision. You have a choice of procedures: 1) Complaint process; 2) Grievance procedure; and/or 3) State fair hearing.

You have a right to continue to receive the service at least until the state fair hearing, if you **request an appeal before the date of the intended action and request a state hearing within 10 days of the appeal decision.** DMH Letter No. 05-03, Cal. Code Regs. tit. 9, § 1850.215, Cal. Code Regs. tit. 22, § 51014.2. . Cal. Code Regs. tit. 9, § 1850.215. *See Medi-Cal Mental Health Managed Care (PAI 1999).*

If the MHP fails to provide proper notice, you should request an appeal when you learn of the termination, reduction or suspension. If the MHP does not act on your request for an appeal, you should request a state fair hearing. You can also request that the service continue through the fair hearing on the grounds that timely or adequate notice was not provided. Contact Disability Rights California for more information.

If I Appeal, Can I Have Someone Represent Me?

Yes. You can be represented by an attorney, a non-attorney advocate, a family member or a friend. Cal. Code Regs. tit. 9, §§ 1850.205(c)(2) and (3), 1850.210(d)(4)(B). You can also have anyone you choose go with you to the meeting or hearing. This can be very helpful. Contact your county Patients' Rights Advocate or Disability Rights California for more information.