



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 30, 2020
MOAHR Docket No.: 19-012081
Agency No.: [REDACTED]
Petitioner: [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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 9, 2020. [REDACTED], a family friend, appeared and testified on Petitioner's behalf.¹ Petitioner and [REDACTED] Petitioner's mother, also testified as witnesses for Petitioner. Stefanie Zin, Fair Hearings Officer, appeared and testified on behalf of the Respondent, the Community Mental Health Authority of Clinton, Ingham, and Eaton Counties (CMHA-CEI or Respondent). Clorisa Adleman, Case Manager; Megan Hazzard, Case Manager; Scott Belanger, Intake Coordinator; and Marie Carrell, Supervisor of Case Management; also testified as witnesses for Respondent.

During the hearing, the following exhibits were entered into the record:

For Petitioner:

Exhibit #1: Neuropsychological Evaluation Report dated February 26, 2019

For Respondent:

Exhibit A: Request for Hearing
Exhibit B: Assessment dated May 2, 2019
Exhibit C: Adverse Benefit Determination dated May 14, 2019
Exhibit D: Adequate Notice for Denial of Services dated September 24, 2019
Exhibit E: Request for Second Opinion
Exhibit F: Assessment dated June 18, 2019
Exhibit G: Adverse Benefit Determination dated June 18, 2019
Exhibit H: Second Opinion and Assessment Letter dated July 2, 2019
Exhibit I: Request for Local Appeal

¹ Ms. Lopilato also indicated that she was an attorney, but that she was not acting as Petitioner's attorney in this case.

Exhibit J: Notice of Local Appeal Decision dated September 30, 2019
Exhibit K: Excerpt from Medicaid Provider Manual
Exhibit L: MCL 330.1208

ISSUE

Did Respondent properly deny Petitioner's request for 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. Medicaid is a jointly funded federal-state program that provides reimbursement for covered healthcare services for eligible individuals. 42 USC 1396 *et seq.*; MCL 400.1 *et seq.*
2. The Department of Health and Human Services (DHHS or Department) is the "single state agency" that is charged with administering Michigan's Medicaid program. 42 USC 1396a(a)(5).
3. Pursuant to MCL 400.109f, the Department contracts with a network of Prepaid Inpatient Health Plans (PIHPS) to provide mental health services to Medicaid beneficiaries. Medicaid Provider Manual (MPM), Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, § 1.1.
4. The PIHPs may then contract with local Community Mental Health Services Programs (CMHSPs), who in turn provide services to Medicaid beneficiaries. MPM, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, § 1.1
5. Respondent is a CMHSP that contracts with the PIHP Mid-State Health Network.
6. Petitioner is a [REDACTED] year-old Medicaid beneficiary who has been diagnosed with Autism Spectrum Disorder (ASD); Attention-Deficit Hyperactivity Disorder (ADHD), Combined Type; Mild Intellectual Disability; Depressive Disorder, Unspecified; and Anxiety Disorder. (Exhibit #1, pages 1, 7; Exhibit B, pages 13-14).
7. Beginning when he was approximately 18 months-old, Petitioner began receiving services through his local school district, including Early On services, speech-language pathology (SLP) services, occupational therapy (OT) services, and special education services. (Exhibit B, page 10).

8. While in school, he was twice suspended after exposing himself to his peers and convincing a minor girl to let him touch her inappropriately. (Exhibit B, page 4).
9. Petitioner did receive a Certificate of Completion for high school. (Exhibit B, page 10).
10. Following high school, he received services through the Eaton Regional Education Service Agency (RESA) for a year due to his cognitive impairment and to gain work skills. (Exhibit B, page 10).
11. Since at least October of 2017, Petitioner has also had an open case with Michigan Rehabilitation Services (MRS) due to his disabilities and need for vocational assistance. (Exhibit B, page 10).
12. In early 2019, MRS referred Petitioner for neuropsychological evaluation in order to assess his cognitive functioning, clarify his diagnoses, and make recommendations regarding services. (Exhibit #1, page 1).
13. As part of that evaluation, the neuropsychologist conducted separate clinical interviews with Petitioner and his mother on February 11, 2019. (Exhibit #1, page 1).
14. The neuropsychologist also reviewed select medical and MRS records with respect to Petitioner. (Exhibit #1, pages 3-6).
15. On or about February 26, 2019, the neuropsychologist issued a Neuropsychological Evaluation Report. (Exhibit #1, pages 1-12).
16. As part of that evaluation, the neuropsychologist noted that Petitioner has already received a number of vocational services, but that he has been unable to achieve competitive employment. (Exhibit #1, page 1).
17. In summary, the neuropsychologist wrote:

While [Petitioner] was cooperative throughout the evaluation, he demonstrated behaviors likely to interfere with successful employment. For example, his hygiene was poor, he complained about tasks, he spoke loudly, he often interrupted the examiner, and he exhibited poor social skills. He exhibited articulation problems, word substitutions, and difficulty communicating at times history with his history of speech and language impairment. Consistent with previous assessments, his intellectual and adaptive functioning skills were

measured in the extremely low range. Language processing skills including reading and writing development were consistent with his overall abilities in the extremely low range. He exhibited a relative strength yet low average performance on measures assessing perceptual reasoning or problem-solving abilities and math computation skills. Consistent with his ADHD diagnosis, he exhibited significant fidgety behavior and impairment on a measure of sustained visual attention despite medication management. Ratings of his social responsiveness by [Petitioner] and his mother indicated severe impairment consistent with recently diagnosed ASD. A careful review of symptoms reported by his mother throughout the examinee's development revealed the symptoms of ASD were present from the early age but never diagnosed likely because of the extent of his learning and attentional impairment. Finally, [Petitioner] reported experiencing extremely severe symptoms of depression, severe symptoms of anxiety, and moderate symptoms of stress at the time of the evaluation, and his mother reported similar concerns. It seems clear that his current medication regime is ineffective in managing his mood disturbances and anxiety. The examinee's disability is likely related to his history of prematurity.

From a diagnostic perspective, [Petitioner] clearly meets criteria for a diagnosis of a mild intellectual disability, which was documented as early as 2001. He also meets criteria for a diagnosis of ASD, also present from an early age. The extent and severity of his early language impairment and ongoing relative weakness in language argues for a presentation consistent with autistic disorder as opposed to Asperger's disorder. He meets criteria for a diagnosis of ADHD, combined type. While he demonstrated a pattern of relatively better developed nonverbal to verbal skills, his diagnosis of intellectual disability better explains his learning problems than a

diagnosis of a specific learning disability in reading or writing. Fine motor impairment or motor output problems are likely related to his history of prematurity. Similarly, it is not unexpected for children with a history of prematurity to struggle with emotional functioning. Based on current findings, [Petitioner] meets criteria for diagnoses of unspecified depressive disorder and unspecified anxiety disorder.

Exhibit #1, page 7

18. As recommendations, the neuropsychologist wrote in part:

Recommendations:

1. I recommend sharing the results of this evaluation with [Petitioner's] treating physicians and other treatment professionals.
2. I strongly recommend that [Petitioner] be reconsidered for services at Community Services for the Developmentally Disabled through his local Community Mental Health Agency. Evidence from a record review and current findings indicated that the examinee has a severe chronic condition related to his prematurity manifested by diagnoses of mild intellectual disability, ASD, and ADHD present from an early age (and documented as early as 2001). These symptoms will continue indefinitely and result in substantial functional limitations in three or more major life activities of daily living including conceptual skills or communication, social functioning, and practical skills. He requires consistent support and supervision from his mother but still struggles to carry out basic hygiene routines. She manages instrumental activities of daily living like providing transportation, managing his finances, and making appointments. His condition is further complicated by emotional impairment including symptoms of anxiety

and depression at this time. At least some of this emotional impairment is likely related to his lack of structure, support, and expectations in his environment. Thus, his developmental disability reflects his need for a combination of interdisciplinary support including case management services, behavioral treatment, supported employment, and psychiatric care.

3. The above evaluation results indicate [Petitioner] will require substantial assistance in order to be productive in a work setting and refrain from socially inappropriate behaviors. It is likely he will need direct job coaching through supported employment.
4. I recommend [Petitioner] be considered for programming available to individuals with developmental disabilities to provide increased structure and support, particularly with regard to social skill development and behavioral management. For example, consider his eligibility for applied behavior analysis (ABA) services.

Exhibit #1, page 8

19. On April 23, 2019, Petitioner requested services through Respondent. (Exhibit B, page 1).
20. On May 2, 2019, Ms. Adleman, a Limited Licensed Master Social Worker (LLMSW)/Master of Social Work (MSW), employed by Respondent completed an initial assessment with Petitioner. (Exhibit B, pages 1-17).
21. At the time of the that assessment, Respondent had a copy of the Neuropsychological Evaluation Report dated February 26, 2019. (Exhibit B, pages 4, 12; Testimony of Ms. Adleman).
22. In her subsequent assessment report, Ms. Adleman noted that Petitioner has an open case with MRS, but that he is also seeking vocational supports and services through Respondent to get back out into the workplace. (Exhibit B, page 1).
23. She also noted that Petitioner is unemployed and that previous attempts at employment have been unsuccessful, with Petitioner's most recent

employment, through MRS, terminated because he struggled within the work environment to maintain appropriate boundaries and interact socially with others. (Exhibit B, page 4).

24. She further noted that Petitioner lives in his own apartment and is his own guardian, but that his mother is his representative payee for his Social Security Benefits and she assists Petitioner in paying for rent, paying for utilities, and managing his budget. (Exhibit B, page 4).
25. With respect to Petitioner's abilities within his home, the assessment report found that Petitioner is independent in his Activities of Daily Living (ADLs), though he may need some reminding to complete tasks; he can respond to an emergency; he manages his own transportation; and he manages his own daily health care needs, including his medications. (Exhibit B, pages 6-7, 9).
26. The report also found that Petitioner has been provided with a pre-diabetic assessment and he subsequently asked his mother for help shopping for healthier food options; independently sought out a book on diabetes prevention; and increased his own exercise. (Exhibit B, pages 7, 9).
27. With respect to Petitioner's abilities outside of the home, the assessment report found that Petitioner is a social individual who is familiar with the nearby community and can access it independently, but that he has had previous issues with seeking out inappropriate sexual relationships, including relationships with minors and that, while he has not had any legal charges, he currently does not have any access to the internet or a cell phone due to past inappropriate use and his mother continues to monitor him. (Exhibit B, pages 4-5).
28. In conclusion, Ms. Adleman wrote in part:

For the purposes of eligibility, CSDD uses the following definitions for adaptive functioning areas as specified in the Mental Health Code:

A) Self Care: Individual needs significant (substantial) assistance in the areas of eating, toileting, bathing, grooming, dressing, transferring, ambulation, and assistance with self administered medication.

-[Petitioner] is able to independently manage his self-care needs. He does not require any physical assistance for any self-care/hygiene tasks and manages his daily medications needs independently. This is not an area of substantial limitation.

B) Receptive/Expressive Language: Ability to comprehend and express information through symbolic behaviors (spoken word [sic], written word, sign language, graphic symbols) or non-symbolic behaviors (facial expression, body movement, touch, gesture).

-[Petitioner] is able to express his wants and needs verbally, and can read and write. He engages in reciprocal dialogue appropriate to the conversation at hand. He does not have a substantial limitation in this area.

C) Learning: cognitive abilities and skills related to learning at school or through other setting which allows one to acquire functional skills for independent living.

-Though he has learning disabilities in reading and written expression, [Petitioner] was able to learn while in school, and perform the necessary work skills at PVI, and to volunteer in the community as well. He has learned the necessary skills to live independently, and though he makes choices that seem to emphasize his deficits rather than his abilities, these are choices based on motivation, not on ability (ie [sic], choosing not to complete hygiene tasks daily). [Petitioner] has shown an ability to learn functional learning outside of the school system as evidenced by his ability to complete IL skills such as: using Eatran, completing multistep processes such as laundry, and accessing the library to obtain a book on a specific topic (diabetes). He does not have a substantial limitation in this area.

D) Mobility: Ability to travel in the community in order to obtain services from community businesses, public facilities and churches or synagogues.

-[Petitioner] is able to take Eatran to appointments, can walk where he needs to go, or has his family take him. [Petitioner] engages in the community independently on a daily basis. He does not have a substantial limitation in this area.

E) Self-Direction: skills related to making choices, learning and following a schedule. The ability to initiate activities appropriate to the setting and condition including seeking assistance when needed.

-[Petitioner] is his own guardian, and is able to make choices and learn. He prefers to follow his schedule or routine, and does struggle with anxiety and fear when unexpected change occurs. He's able to initiate activities appropriate to the setting, and is able to seek out assistance when he needs it. This is evidenced by his ability to recognize the problems the internet was making in his life and choosing to remove those temptations from his life to ensure that he did not face legal troubles. He does not have a substantial limitation in this area.

F) Capacity for Independent Living: skills related to functioning safely within a home and nearby neighborhood and being able to communicate needs for assistance within the home and community setting. This area is not considered for children under 18 years of age.

-[Petitioner] is able to maintain his own apartment, though these tasks don't always get done. This is an issue of motivation, rather than ability. He's able to keep himself safe within his community, and is able to communicate when he needs assistance. He does not have a substantial limitation in this area.

G) Economic Self-Sufficiency: Ability to support oneself through gainful employment or having income through a trust, annuity, pension or entitlement program such that the individual may choose not to work and maintain a basis standard of living. An individual enrolled in a full time school or training program would be considered economically self sufficient. This area is not considered for children under 18 years of age.

-[Petitioner] receives [REDACTED]/month in SSI. He also has regular Medicaid, and BCN of MI through his Mom's work, to assist him in meeting his physical and mental health needs. He does not have a substantial limitation in this area.

Based on review of available clinical documents, clinical interview, history and RAP results, [Petitioner] has a condition that is attributable to a mental or physical impairment that manifested before age 22 and that is likely to continue indefinitely. However, this impairment does not reflect the need for treatment or services that are of extended duration and are individually planned and coordinated. [Petitioner] does not have functional limitations in any of the adaptive functioning areas . . . Based on the definition of Developmental Disability as listed in the Michigan Mental Health Code and CSDD Operational Guidelines, [Petitioner] is ineligible for services.

[Petitioner] has been found ineligible for CSDD services at this time. [Petitioner] indicated needs in regards to community job placement and job coaching. These needs can be met by accessing community services with Disability Network, and MRS. [Petitioner] may also benefit from continued social coaching regarding healthy relationships which can be accessed through Disability Network and/or ASPPIRE.

Exhibit B, pages 15-16

29. On May 2, 2019, Respondent sent Petitioner written notice that his request for services had been denied because he did not meet the eligibility criteria for services. (Exhibit C, pages 1-4; Exhibit D, pages 1-2).
30. On June 11, 2019, Petitioner requested a Second Opinion regarding his request with Respondent. (Exhibit E, page 1).
31. As part of that request, Petitioner specifically asked Respondent to review the neuropsychological evaluation that he had attached and where the

neuropsychologist concluded that he met the criteria for services. (Exhibit E, page 1).

32. On June 18, 2019, Ms. Hazzard, LLMSW/MSW, completed a second assessment with Petitioner for Respondent. (Exhibit F, pages 1-16).
33. She did not review the Neuropsychological Evaluation Report dated February 26, 2019, as part of that assessment. (Testimony of Ms. Hazzard).
34. Following that assessment, Ms. Hazzard reached the same conclusions made during the initial assessment. (Exhibit F, pages 13-15).
35. Respondent also sent Petitioner another notice of denial. (Exhibit G, pages 1-4; Exhibit H, page 1).
36. Between August 26, 2019 and October 3, 2019, Petitioner completed a career tryout with an employers, Peckham Farm and Peckham Charlotte, arranged by MRS in order to assess his skills and abilities in the workplace. (Exhibit A, pages 6-15).
37. Following that tryout, a Vocational Evaluation Specialist (VES) concluded:

At this time, [Petitioner] would have difficulty maintaining competitive and integrated employment without supports. During the tryout he struggled with stress management, staying on task, maintaining productivity and having appropriate workplace conversations. He reported to VES that he wanted to work yet often gave justifications for why he was struggling to stay on task including, "I'm not used to working", "When I get warm I can't stay on task", "I'm tired" and "my back hurts". He often reported feeling tired, stressed, anxious and complained of body pains frequently. It was difficult for VES to gauge what supports would be most helpful for [Petitioner] as he had difficulty identifying coping skills and struggled to accepted feedback. He was able to complete tasks assigned to him but with a low rate of productivity. He did demonstrate that he is able to multi-task by completing tasks and talking with VES simultaneously.

- [Petitioner] reported that he took a break from attending therapy sessions due to his work schedule. It is imperative that [Petitioner] make mental health counseling a priority and ensure that he can maintain appointments while working. [Petitioner] has difficulty identifying coping skills to aide [sic] in his anxiety, stress management and focus. He would benefit from developing appropriate coping skills to use on the job. It is vital for him to learn how to manage and express his emotions appropriately. In addition, he would benefit from developing strategies to separate his personal life from work to help him stay more focused on the job.
- [Petitioner] needs a supported work environment for best potential success for maintaining employment long term. He will need additional support on the job assisting with problem solving, reasoning, providing emotional support and learning to accept and implement feedback.
- [Petitioner] struggled with oversharing personal information and keeping workplace conversations appropriate. He would benefit in further soft-skills training to increase his knowledge of appropriate boundaries and communication skills on the job. [Petitioner] would benefit from learning and understanding the importance of establishing boundaries to limit personal oversharing. This is a vital social skill that we help him to improve his ability to interact with customers/coworkers and maintain appropriate working relationships. In addition, it is imperative that he gain these skills to aide [sic] in the process of interviewing for and maintaining long-term employment.

- It will be beneficial for [Petitioner] to have continued mentoring and monitoring from support staff of appropriate workplace attire and grooming. In addition, he may need assistance with medication management, securing transportation and other living skills to help him improve his independence in those areas.
- The CEI Community Mental Health (CMH) supported employment and Transition services may be beneficial in assisting [Petitioner] in his employment goals. They can provide additional support through skill building and development of interpersonal goals as well as providing assistance and support with community job placement. CMH also provides medication management, case management and assistance with independent living skills.

Exhibit A, pages 15-16

38. On September 3, 2019, Petitioner filed a Local Appeal with Respondent regarding the denial of his request for services. (Exhibit A, page 4; Exhibit I, pages 1-5).
39. On September 30, 2019, Respondent sent Petitioner written notice that his Local Appeal had been denied and that the decision to deny his request for services had been upheld. (Exhibit A, pages 4-5; Exhibit J, pages 1-7).

40. With respect to the reason for the appeal decision, the notice stated:

Our decision to deny your appeal was based upon: Three separate intakes have demonstrated that [Petitioner] does not have a Developmental Disability as defined by the Michigan Mental Health Code (Please see the attachment).

Specifically, it was identified that the amount, frequency, scope and duration of assistance needed by [Petitioner] does not appear to rise to the level of “substantial functional limitations” as required by the Michigan Mental Health Code.

Exhibit A, page 4
Exhibit J, page 1

41. On November 19, 2019, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding Respondent's decision to deny Petitioner's request for services. (Exhibit A, pages 2-15).

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.

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...

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).

Eligibility for services through Respondent is set by Department policy as outlined in the Medicaid Provider Manual (MPM). Specifically, the applicable version of the MPM states in the pertinent part that:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter

of this manual for additional information.) Such need must be documented in the individual's clinical record.

MPM, April 1, 2019 version
Behavioral Health and Intellectual and Developmental Disability Support and Services
page 3

The State of Michigan's Mental Health Code defines serious mental illness and serious emotional disturbance as follows:

(2) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) "V" codes in the diagnostic and statistical manual of mental disorders.

(3) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance abuse disorder.

- (b) A developmental disorder.
- (c) A "V" code in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d

Additionally, with respect to developmental disabilities, the Mental Health Code also provides in part:

(25) "Developmental disability" means either of the following:

- (a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
 - (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - (ii) Is manifested before the individual is 22 years old.
 - (iii) Is likely to continue indefinitely.
 - (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (A) Self-care.
 - (B) Receptive and expressive language.
 - (C) Learning.
 - (D) Mobility.
 - (E) Self-direction.
 - (F) Capacity for independent living.
 - (G) Economic self-sufficiency.
 - (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a(25)

Here, Respondent denied Petitioner's request for services pursuant to the above policies and statutes, and on the basis that Petitioner does not present as eligible for ongoing services through Respondent as a person with either a severe mental illness or a developmental disability.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his request for services. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information it had at the time it made that decision.

Given the record and available information in this case, the undersigned Administrative Law Judge finds that Petitioner has met that burden of proof and that Respondent's decision must therefore be reversed.

Both parties agreed that the sole issue in this case is whether Petitioner meets the criteria for having a developmental disability and, as discussed above, in order to meet that criteria, Petitioner must have a disability attributable to a mental or physical impairment, or a combination of mental and physical impairments, that manifested before he was ■ years old, that is likely to continue indefinitely, and that results in a substantial functional limitation in three or more areas of major life activity.

Moreover, it is also undisputed that Petitioner has a disability attributable to a mental or physical impairment, or a combination of mental and physical impairments, that manifested before he was ■ years old and that is likely to continue indefinitely; and that the only issue is whether Petitioner's disability results in substantial functional limitations in three or more of the listed areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency.

In support of the argument that Petitioner does have substantial functional limitations in three or more areas of major life activity, Petitioner relies in large part on the neuropsychological evaluation report dated February 26, 2019, and in in which the neuropsychologist extensively described Petitioner's limitations in a number of areas and expressly concluded both that Petitioner should be referred to Respondent for services and that Petitioner's disability results in substantial functional limitations in three or more major life activities of daily living.

As provided by the report regarding Respondent's initial assessment, where the reviewer quoted from or referenced the neuropsychological evaluation at times, Respondent clearly had a copy of the neuropsychological evaluation at all times relevant to this matter. Moreover, given that Petitioner's request for a second opinion expressly asked that Petitioner's request for services be reviewed again in light of the neuropsychological evaluation and the conclusions within it, Respondent should have been aware of the importance of the evaluation to Petitioner's request.

However, despite the fact that the neuropsychological evaluation was a professional assessment that goes directly to the eligibility at issue and was provided by Petitioner in support of his request, the record in this case reflects that Respondent did not consider the neuropsychological evaluation when making its decision. The initial reviewer quoted from the neuropsychological evaluation in her assessment report, but only when describing Petitioner's history and she did not address the findings of the evaluation

itself or its conclusions regarding Petitioner's limitations. Nor did she testify regarding the evaluation at the hearing, beyond noting that she must have considered it given that she quoted from it. Moreover, even though Petitioner expressly asked for Respondent to review the neuropsychological evaluation while Respondent was making its second opinion, that reviewer testified that she did not see the neuropsychological evaluation when conducting her review and that she therefore did not consider it. Similarly, Respondent's other two witnesses testified that, when reviewing this case, they did not review the neuropsychological evaluation and they could not comment on it without seeing it.

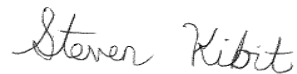
The neuropsychological evaluation and its findings are clearly not dispositive in this case, but they are also clearly relevant and a central part of Petitioner's argument. The evaluation has also been part of Petitioner's record since his initial application in this case and, by failing to consider it, Respondent erred; its denial must be reversed; and it should initiate a reassessment of Petitioner's request for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly denied Petitioner's request for services.

IT IS THEREFORE ORDERED that

- The Respondent's decision is **REVERSED** and it must initiate a reassessment of Petitioner's request for services.



SK/sb

Steven Kibit
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

Belinda Hawks
320 S. Walnut St.
5th Floor
Lansing, MI
48913

Authorized Hearing Rep.

[REDACTED]
MI

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