



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: July 1, 2020
MOAHR Docket No.: 20-000081
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on February 26, 2020. [REDACTED] mother, represented the Petitioner. [REDACTED] the Petitioner, was present. Mike Schlack, Attorney, represented the Respondent, Southwest Michigan Behavioral Health (SWMBH). Jeremy Franklin, Clinical Quality Specialist, appeared as a witness. Heather Woods, Customer Service, was present as an observer.

During the hearing proceeding, Respondent's Hearing Summary packet was admitted as Exhibit A, pp. 1-25, and Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-11.

ISSUE

Did Respondent properly reduce Skill Building Assistance services for Petitioner?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Integrated Services of Kalamazoo (ISK) is a member of the PIHP SWMBH. (Exhibit A, p. 1)
2. Petitioner is an adult Medicaid beneficiary.
3. Petitioner receives services from ISK, including medication review, skill building assistance, community living supports (CLS), support and service

- coordination, and residential/personal care services. (Exhibit A, pp. 1 and 16)
4. Petitioner was attending skill building 4.5 days per week. (Exhibit A, p. 3)
 5. ISK determined that 4.5 days per week of skill building services is not medically necessary for Petitioner. (Exhibit A, p. 1)
 6. On November 22, 2019, a Notice of Adverse Benefit Determination was issued to Petitioner stating the skill building assistance services would be reduced to 2 days per week effective December 20, 2019. (Exhibit A, pp. 3-5)
 7. On December 10, 2019, Petitioner requested a local appeal. (Exhibit A, p. 6)
 8. On January 3, 2020, ISK issued a Notice of Appeal Denial to Petitioner upholding the reduction of skill building services with an effective date of February 3, 2020. In part, the notice indicates the ISK Level of Care/Authorization Guidelines for skill building services provide for a typical attendance pattern of 2 days of out of home programming for individuals who also reside in a Specialized Residential setting like Petitioner. The goals in Petitioner's treatment plan related to skill building were noted. While Petitioner benefits from skill building services, it was noted that she had been struggling to meet her percentage measure scores for success in all her skill building goals and objectives. The review also did not identify that Petitioner qualified for an exception to attend out of home skill building services and more than the 2 days indicated in the Guidelines. (Exhibit A, pp. 8-10)
 9. On January 14, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing contesting the determination. (Exhibit A, pp. 11-12)

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 1396(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).

With respect to Skill Building services, the Medicaid Provider Manual (MPM) states:

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 supported employment services provided by Michigan Rehabilitation Services (MRS) or the Bureau of Services for Blind Persons (BSBP). Information must be updated when the beneficiary's MRS or BSBP 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, 2020, version
Behavioral Health and Intellectual and Developmental Disability Supports
and Services Chapter, pages 147-148*

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. The Medicaid Provider Manual (MPM) sets forth the criteria for medical necessity:

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, 2020, version
Behavioral Health and Intellectual and Developmental Disability Supports
and Services Chapter, pages 14-15*

On January 27, 2020, Respondent completed a Utilization Review and recommended upholding the decision to reduce Petitioner's skill building services to 2 days per week. (Exhibit A, pp. 13-17) In part, the Utilization Review went over Petitioner's current services, which include medications review, skill building assistance, CLS, support and service coordination, and residential/personal care. (Exhibit A, p. 16) Petitioner's psychiatric status was also reviewed. The records indicated that in January 2019, there was discussion of increasing one of Petitioner's medications, but Petitioner refused this. At the next medication review in April 2019, Petitioner talked about and agreed to the medication increase. In July 2019, it was reported that Petitioner had done well with the change. (Exhibit A, p. 16) The service outcomes in the last six months indicated some objectives achieved and that Petitioner was stable the past six months. (Exhibit A, pp. 17-18) The Rationale section of the Utilization Review states:

It is the clinical recommendation of this reviewer that the authorization of 2 days a week should be upheld. According to Section 17.3.J of the medicaid provider manual, Skill building assistance is to "increase economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The service provides knowledge and specialized skill development and/or support. It can help with Out-of-home adaptive skills training. Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills." By contrast, Medicaid provider manual section 17.3.B discusses Community Living Supports as being "used to increase or maintain personal self-sufficiency" and can include "facilitating an individual's achievement of his goals of community inclusion and participation, independence, or productivity." CLS services includes "staff assistance, support, and/or training with activities such as: socialization and relationship building, participation in regular community activities and recreation opportunities (such as volunteering) and staff assistance with preserving health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting. Even though the Skill building services would be reduced in this plan, many of these goals can be addressed through Community Living Supports services already in place. It is the responsibility of the CLS services provider to address these concerns and

provide adequate supports/treatment in order to address these needs. [Petitioner] currently does not meet medical necessity criteria for exclusion from established level of care guidelines, and this decision is based on section 2.5D of the medicaid provider manual which states that a PIHP may deny services “for which there exists other appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically necessary services.”

(Exhibit A, p. 19)

There is some natural overlap between skill building and CLS services regarding what types of goals can be obtained and worked on. While the skill building services would be reduced, the CLS services already in place could be modified to encapsulate the goals that are being worked on in skill building. The Clinical Quality Specialist described the process that would take place for this. (Clinical Quality Specialist Testimony)

Petitioner’s mother does not understand why skill building and work at MRC has to be decreased. Petitioner’s mother feels there is a moral obligation to enable special needs people to live a normal life, such as doing things in the community. Petitioner is going to the workshop and working on an art project. By decreasing Petitioner’s programs those other days she will be doing nothing but sitting around watching television. Petitioner’s mother does not feel that Petitioner will be growing without these training skills. Petitioner’s mother feels that Petitioner needs the additional skill building time for her self-esteem. Further, individuals that are incarcerated are given opportunities daily to better themselves through training and skill building, and they have income. However, Petitioner’s opportunities are being cut back to working 2 days which decreases her chance of having an income. (Mother Testimony) A letter from Petitioner, as well as multiple notes/emails/letters from her doctor, mother, as well as additional family members and friends were submitted. (Exhibit 1, pp. 2-11)

Petitioner wants the 4 days, not 2 days. (Petitioner Testimony)

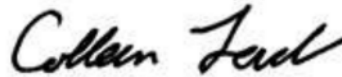
Given the evidence and applicable policies, in this case Petitioner has not met her burden of proof regarding the CMH’s determination to reduce skill building services to 2 days per week. As noted from the utilization review, Petitioner was stable, had achieved some of her objectives, and the CLS services already in place could be modified to encapsulate the goals that are being worked on in skill building. Accordingly, another appropriate, efficacious, less-restrictive and cost effective service, setting or support exists that otherwise satisfies the standards for medically necessary services. Respondent’s determination to reduce skill building services for Petitioner to 2 days per week is upheld based on the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly reduced skill building services for Petitioner to 2 days per week based on the available information.

IT IS THEREFORE ORDERED that:

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



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

CL/dh

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

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DHHS Department Rep.

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Petitioner

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