



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: January 12, 2022
MOAHR Docket No.: 21-005389
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 5, 2022. Petitioner appeared and testified on her own behalf, with her friend [REDACTED] also testifying as a witness. Jackie Bradly, Fair Hearings Officer, represented the Respondent Lenawee Community Mental Health Authority. Jennifer Carpenter, Access Program Director, and Amber Monahan, Integrated Health Program Director, testified as witnesses for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1. Respondent also submitted three documents that were admitted into the record as Exhibits A-C.

ISSUE

Did Respondent properly decide to terminate Petitioner's self-help/peer support services and skills training and development?

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 schizophrenia and has a history of being physically and emotionally abused. (Exhibit C, pages 1, 6, 12; Testimony of Petitioner).
2. She also exhibits risk factors related to feeling trapped, mood swings, limited coping skills, and social isolation. (Exhibit C, page 11; Testimony of Petitioner).

3. Due to her diagnosis and limitations, Petitioner has been authorized for services through Respondent, a Community Mental Health Service Provider (CMHSP) associated with a Prepaid Inpatient Health Plan (PIHP). (Exhibit C, pages 1-15).
4. As part of her services, Petitioner was approved for self-help/peer support services, for assistance with decreasing isolation, and skills training and development, for assistance with mindfulness. (Exhibit C, pages 1-2, 13).
5. However, she stopped utilizing those services by July 13, 2021. (Exhibit C, page 13; Testimony of Access Center Director).
6. On September 23, 2021, Respondent completed an Annual Bio/Psycho/Social assessment with Petitioner. (Exhibit C, pages 3-15).
7. During that assessment, Petitioner reported that she continues to have depression and anxiety that impairs her ability to interact with others. (Exhibit C, pages 10, 13).
8. She also reported that it is easier to get up in the morning with the help of peer supports. (Exhibit C, page 5).
9. She further reported an interest in therapy, but then declined a referral for therapy in the community. (Exhibit C, page 13).
10. Petitioner also had no interest in psychiatric services or medication treatment. (Exhibit C, page 13).
11. She had not had any emergency room visits, inpatient hospitalizations, health issues, crisis calls, diagnostic changes or substance abuse matters. (Exhibit C, page 4).
12. She also reported that she was working towards a master's degree through an online program. (Exhibit C, page 5).
13. She further reported that she utilized a friend to get around to stores, and that she attended and played piano/organ at a church. (Exhibit C, page 13).
14. On September 28, 2021, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that her self-help/peer services and skill training and development would be terminated on October 9, 2021. (Exhibit A, pages 1-14).
15. With respect to the reason for the adverse benefit determination, the notice stated:

The clinical documentation provided does not establish medical necessity.

Consumer has not engaged in services since 7/2021, she has not had any crisis calls, inpatient admissions, she is obtaining her Master's degree in an on-line program, she is going to church and engaging in playing the piano/organ. She does not meet criteria for peer support services at this time.

Exhibit A, page 1

16. On October 4, 2021, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit #1, page 3; Exhibit A, pages 5-6).
17. On October 27, 2021, Respondent sent Petitioner a Notice of Resolution of Internal Appeal stating that the decision to terminate Petitioner's services was being upheld. (Exhibit #1, pages 3-5).
18. On November 9, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding Respondent's decision. (Exhibit #1, pages 1-5).

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).

Here, as discussed above, Petitioner has been receiving self-help/peer support services and skills training and development through Respondent. With respect to such services, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

17.3.G. PEER-DELIVERED OR -OPERATED SUPPORT SERVICES

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

Peer-delivered or peer-operated support services are programs and services that provide individuals with opportunities to learn and share coping skills and strategies, move into more active assistance and away from passive roles, and to build and/or enhance self-esteem and self-confidence.

* * *

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.

MPM, July 1, 2021 version

*Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 141, 150*

While self-help/peer support services and skills training and development are covered services, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services. 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.

*MPM, July 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 14-16*

Moreover, in addition to medical necessity, the MPM also identifies other criteria for B3 supports and services such as self-help/peer support services and skills training and development:

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.

Community Inclusion and Participation	The individual uses community services and participates in community activities in the same manner as the typical community citizen. Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.) activities. A beneficiary's use of, and participation in, community activities are expected to be integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with intellectual
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	disability).
Independence	"Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent of such freedom for him/herself during person-centered planning. For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently.
Productivity	Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness.

	For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity may be successful participation in home, pre-school, or child care activities. Children under 18 would be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses.
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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. MDHHS 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.

Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.

*MPM, July 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 132-133*

Here, as discussed above, Respondent decided to terminate Petitioner's self-help/peer support services and skills training and development pursuant to the above policies.

In support of the action, Access Program Director testified regarding the review conducted in this case and the determination that Petitioner's self-help/peer support services and skills training and development were not medically necessary. In particular, she noted that, while Petitioner had not been utilizing the services for months, there had not been any issues and that Petitioner had not had any crisis calls or inpatient admissions. She also testified that Petitioner was enrolled in an online master's program and working toward a degree, and that Petitioner attends church and plays the piano/organ there.

Respondent's Integrated Health Program Director further testified regarding the Internal Appeal determination and the same decision made with respect to the lack of medical necessity after reviewing Petitioner's records and speaking with her.

In response, Petitioner testified that that, since the Internal Appeal decision, she has decided to take advantage of the services and is willing to do so now, in addition to therapy services she is now seeking. She also testified that the services were helpful, especially given her ongoing issues with anxiety, physical difficulties and transportation issues, and that her peer supports would give her needed rides. Petitioner agreed that she stopped using her approved services in July of 2021, but further testified that she only did so because of health issues and that she needed a break. She did not recall if she informed Respondent of her decision to take a break before or during her annual assessment, but that she thinks that she asked her support workers to pass along the message.

Petitioner's friend testified that he has known Petitioner for five years; she is a genuine person; and that she has issues with fear and letting things bother her.

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

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that Respondent's decision must therefore be affirmed.

While Petitioner argues that her services were medically necessary, she had not been utilizing them for at least a month and a half prior to the initial decision and, despite not utilizing them, she had not had any crises or issues that would suggest the services remained necessary. Additionally, even without services, she continued to engage in the community by working toward her master's degree, going around to stores with a friend, and attending church, where she also plays the piano and organ.

Moreover, while Petitioner testified that she took a break from her services due to health issues, that testimony is unsupported and, even if true, fails to sustain medical necessity as Petitioner's specific and limited supports would still be usable, and would seem to be more likely to be used, if Petitioner was having health issues or other problems.

Similarly, to the extent Petitioner was willing to take advantage of her services after her Internal Appeal was denied, that does not support Petitioner's argument. The undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information Respondent had at the time it made the decision and, regardless of what Petitioner wanted to do after her services were to be taken away, the record

reflects that Petitioner was not utilizing and did not need the services at the time of the decision.¹

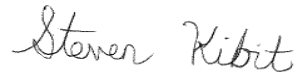
To the extent Petitioner has additional or updated information to provide regarding her need for services, she can always request them again in the future. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's self-help/peer support services and skills training and development.

IT IS THEREFORE ORDERED that

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



SK/tem

Steven Kibit
Administrative Law Judge

¹ Petitioner also indicated during the hearing that she wants a new service as well, *i.e.*, therapy, but any new request is beyond the scope of this proceeding and will not be considered.

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-Location Contact

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Petitioner

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