



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
ACTING DIRECTOR

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MI [REDACTED]

Date Mailed: September 25, 2023  
MOAHR Docket No.: 23-004709  
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 MCL 400.37, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 14, 2023. [REDACTED], a representative from Petitioner's legal guardian, [REDACTED], appeared and testified on Petitioner's behalf. Kathleen Faber, OBRA Appeals Coordinator, appeared and testified on behalf of Respondent, the Michigan Department of Health and Human Services (MDHHS or Department).

During the hearing, the Department submitted six proposed exhibits that were admitted into the record without objection as Exhibits A-F.

### **ISSUE**

Did the Department properly determine that the Petitioner does not qualify for the level of services provided by a nursing facility but requires specialized mental health/developmental disabilities 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. Petitioner is a [REDACTED] Medicaid beneficiary who has been diagnosed with schizoaffective disorder, bipolar type-secondary; end state renal disease; hypertensive chronic kidney disease; human immunodeficiency virus disease; and seizures. (Exhibit A, pages 1, 9).
2. On [REDACTED] 2021, Petitioner was admitted to a nursing facility. (Exhibit A, pages 1, 3).

3. On May 26 2023, Genesee Health System completed an annual Level II OBRA screening of Petitioner, during which it concluded that Petitioner did not require nursing facility services but did require specialized mental health services. (Exhibit A, page 1; Exhibit F, page 1).
4. On May 30, 2023, after further review, the Department issued a determination also finding that the Petitioner did not require the services of a nursing facility but did require specialized mental health/developmental disabilities services. (Exhibit A, pages 1-2; Exhibit F, page 1).
5. The Department reviewer also issued the following recommendation:

Discharge is only to take place if a secure placement with 24/7 awake staffing and transportation to dialysis three times/week can be obtained. While this individual remains in the nursing facility, please work with CMH and Ombudsman on meeting resident's psychosocial needs in the facility (such as behavior management planning, arranging outings with family, etc.)

*Exhibit A, page 2*

6. On August 10, 2023, Genesee Health System sent Petitioner's guardian written notice of that decision. (Exhibit C, page 1; Exhibit D, page 2).
7. On September 6, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (Exhibit D, pages 1-5).

### **CONCLUSIONS OF LAW**

The Medical Assistance Program 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.

Federal law also requires that the state authorities conduct Preadmission Screening and Annual Resident Review (PASARR) reviews for applicants and residents of nursing facilities with the purpose of the statutory provisions is to prevent the placement of individuals with mental illness or mental retardation in a nursing facility unless their medical needs clearly indicate that they require the level of care provided by a nursing facility. See 42 CFR 483.106; 42 CFR 483.128.

In Michigan, PASARR is a two-step/level process that must be completed prior to

admission to a nursing facility, promptly after a significant change in a resident's physical or mental condition, and not less than annually. If the Level I screening indicates an individual may be mentally ill, a Level II evaluation must be performed by the CMH to determine the need for nursing facility services, specialized services, and/or mental health services.

The PASARR requirements in Michigan are found in the Medicaid Provider Manual, which provides in part:

### **SECTION 8 – PASARR PROCESS**

Pre-admission Screening/Annual Resident Review (PASARR) in Michigan is a two-level screening and evaluation process. The Level I screening, and Level II evaluation procedures and forms are the same for Pre-admission Screening (PAS) and Annual Resident Review (ARR). The forms may be obtained from the MDHHS website.

The PASARR process must be completed:

- Prior to admission to a nursing facility;
- Promptly after a significant change in a resident's physical or mental condition; and
- Not less than annually.

The PASARR process is not required in the following situations:

- When an individual is admitted to and resides in a hospital swing bed. However, the PASARR process must be completed prior to admission if the individual transfers to a nursing facility.
- When an individual is readmitted to a nursing facility after a hospital stay. If the Annual Resident Review date occurs during a period of hospitalization, the screening must be completed within 30 days of admission or readmission to the nursing facility.
- For an individual transferring from one nursing facility to another, with or without an intervening hospital stay, unless a Level I screen has not been performed previously. If a Level I screening or Level II evaluation has been completed, the screening evaluation should

accompany the beneficiary to the receiving nursing facility.

- For an individual returning to the nursing facility from therapeutic leave, unless the resident's condition has changed. Therapeutic leave does not change the due date for Annual Resident Review. Advance planning may be necessary to ensure timeliness of review.
- A beneficiary receiving Medicaid hospice services (Benefit Plan ID of Hospice) entering a nursing facility for the five-day hospice respite benefit. A Level I screening must be completed if the beneficiary enters the facility for a length of time beyond the five-day respite period.

The purpose of the Level I screening is to identify individuals who may have a mental illness, intellectual/developmental disability or a related condition. If the patient is on psychotropic or antidepressant medications for purposes of pain control/symptom relief for end of life, note that information on the DCH-3877. This allows the Community Mental Health Services Program (CMHSP) to better evaluate the need for Level II screening. If the patient is on any of the above-mentioned psychotropic medication groups for a related mental illness, the CMHSP will determine the need for Level II screening.

- An individual assessed by adult protective services, requiring protective services, may be granted provisional admission to a nursing facility pending further assessment due to this emergent situation. Placement in a nursing facility is not to exceed seven (7) days.

\* \* \*

## **8.2 LEVEL II EVALUATION**

The purpose of the Level II evaluation is to assess individuals who are identified as having a mental illness, intellectual/developmental disability or a related condition to determine the need for nursing facility services, specialized services, and/or mental health services. All individuals identified by Level I screening as possibly having a mental

illness, intellectual/developmental disability or a related condition (a "yes" response to any question on the Level I screening form, DCH-3877) must receive a Level II evaluation unless it is documented that they meet one of the exemption criteria outlined in the next subsection, or the MDHHS/CMHSP finds that the individual does not meet the criteria for a serious mental illness under the PASARR provisions. The CMHSP is responsible for providing the nursing facility and the individual and/or legal representative with written documentation that the individual does not meet the PASARR criteria for a serious mental illness. If the individual is seeking admission to a nursing facility, the Level II evaluation, when indicated, must be completed prior to admission.

\* \* \*

#### **8.4 LEVEL II EVALUATION COMPLETION**

Individuals who are identified at the Level I screening as having a mental illness or intellectual/developmental disability or a related condition, and who do not meet exemption criteria outlined previously, must be referred to the local CMHSP for a Level II evaluation. Level II evaluations are conducted by mental health professionals through the local CMHSP under contract with MDHHS. The evaluation involves an interview with the individual, review of medical records, and consultation with nursing facility and/or hospital staff. The mental health professional must conduct the Level II evaluation in accordance with the MDHHS OBRA Operations Manual. A copy of this manual may be requested from the MDHHS OBRA Office or the local CMHSP.

When a Level II Evaluation is required, it must be completed prior to nursing facility admission.

When a Level II evaluation is indicated for an Annual Resident Review (ARR), the nursing facility must notify the local CMHSP of the need for the Level II evaluation at least 30 days prior to the due date of the ARR by sending them a new DCH-3877 (Level I screening form). For example, if the initial Level II evaluation was completed on April 15, 2004, the ARR is due April 15, 2005, and the facility must notify the local CMHSP that a new Level II is due by March 15, 2005. The local CMHSP is responsible for timely completion of Level II evaluations and for providing facilities with written

documentation of PASARR determinations in a timely manner.

Once completed, the CMHSP forwards all documentation of the Level II evaluation to MDHHS. Based on this documentation, MDHHS determines whether the individual requires nursing facility services or can be served in an alternate setting. MDHHS also determines whether specialized services or other mental health services are needed to treat the individual's mental illness, intellectual/developmental disability or a related condition.

The MDHHS decision regarding the need for nursing facility services and the need for specialized services is forwarded to the referring CMHSP. It is the responsibility of the CMHSP to explain the evaluation and determination to the individual and his legal representative. The CMHSP must provide a copy of the evaluation and the MDHHS determination letter to the individual and his legal representative and explain the appeal rights to the individual and their legal representative. This information must also be adapted to the cultural background, language, ethnic origin and means of communication of the individual being evaluated.

The local CMHSP notifies the attending physician, nursing facility, and discharging hospital of the results of the evaluation and the MDHHS determination in writing within five (5) days of the review. A copy of this notification must be retained in the individual's record. (Refer to the Distribution of PASARR Documentation subsection of this chapter for additional information.)

If the facility does not receive a written determination as follow-up to a verbal determination within 30 days of an admission, the facility must send a written reminder to the CMHSP and the MDHHS OBRA Office within 45 days of the admission. (Refer to the Directory Appendix for contact information.)

The nursing facility is responsible for verifying that required PAS and ARR processes are completed and documented in the resident's record. The nursing facility medical record must include the determinations of the level of care, the need for specialized services, the original DCH-3877 and DCH-3878 forms, and the Level II evaluation report and supporting documents.

\* \* \*

## **8.7 APPEALS OF PASARR DETERMINATIONS**

Individuals adversely affected by PASARR determinations may appeal the determination or another person may appeal the determination on their behalf. Examples may include the determination that the individual no longer requires specialized services when they have received those services in the past and wish to continue. An individual may decline nursing facility admission or specialized services without appeal. Information regarding the MDHHS administrative hearing (appeal) process is available on the MDHHS website. (Refer to the Directory Appendix for website information.)

*MPM, July 1, 2023 version  
Nursing Facility – Coverages Chapter  
Pages 17, 20-24*

Here, the Department determined that Petitioner does not require nursing facility services, but that she does require specialized mental health/developmental disabilities services, following the Level II evaluation and pursuant to the above policies.

Having reviewed the record, the undersigned Administrative Law Judge finds that the evidence establishes that the OBRA evaluation was thoroughly performed, and the review properly resulted in a determination that Petitioner does not require nursing facility level of services but does require specialized mental health/developmental disabilities services.

The Department is required by law and policy to ensure that beneficiaries reside in the least restrictive setting possible, and the OBRA evaluation here accomplishes that goal, with Petitioner's specific, and significant needs to be taken into an account in any discharge planning. The Department's representative did agree that, while Petitioner does not need a nursing facility, there are few other places that can meet Petitioner's needs and that placing her elsewhere will be a challenge.

Moreover, while the representative from Petitioner's guardian testified that Petitioner benefits from the better structure in nursing facility and has been getting all her needs met there, including regular dialysis, Petitioner's representative also testified that she agreed with the Department's representative's findings; she did not identify any specific need for a nursing facility; and her testimony was more focused about where Petitioner's next placement would be, and not on any need for the current one.

As such, the Department's decision was proper and should be upheld.

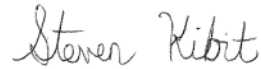
### DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Petitioner did not require nursing facility services but does require specialized mental health/developmental disabilities services.

**IT IS THEREFORE ORDERED** that:

- The Department's decision is **AFFIRMED**.

SK/sj



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**Steven Kibit**  
Administrative Law Judge

**NOTICE OF APPEAL:** Petitioner 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

**PROOF OF SERVICE**

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 25<sup>th</sup> day of September 2023.

*S. James*

S. James

**Michigan Office of Administrative  
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