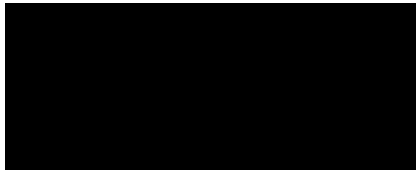




GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR



Date Mailed: March 12, 2024
MOAHR Docket No.: 24-000312
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 February 13, 2024. [REDACTED] Petitioner's mother and legal guardian, appeared and testified on Petitioner's behalf. [REDACTED] Petitioner's cousin and former caretaker, also testified as a witness for Petitioner. Gina Fortino, Utilization Management Supervisor, appeared and testified on behalf of Respondent Shiawassee Health and Wellness (Respondent). Teresa Bolger-Dunlap, Deputy Director of Habilitative Services; Crystal Crammer, Clinical Director; and Brandi Thiel, Case Coordinator; also testified as witnesses for Respondent.

During the hearing, the following exhibits were admitted into evidence without objection:

Petitioner's Exhibit #1: Request for Hearing, pages 1-2

Respondent's Exhibit A: Level of Care Checklist, pages 1-2

Respondent's Exhibit B: Evidence Packet, pages 1-108¹

ISSUE

Did Respondent properly deny Petitioner's request for a specialized residential placement?

¹ As indicated on the record during the hearing, the undersigned Administrative Law Judge numbered Respondent's Exhibit B himself for ease of reference when admitting it.

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 nineteen (19) year-old Medicaid beneficiary who has a legal guardian and who has been diagnosed with autism spectrum disorder; an intellectual developmental disorder, moderate, unspecified; anxiety disorder; cerebral palsy, unspecified; traumatic brain injury as a baby; and a history of seizure activity. (Exhibit B, pages 39, 41, 58-59).
2. Due to his diagnoses and need for assistance, Petitioner has been approved for the Michigan's Habilitation Supports Waiver (HSW) and services through Respondent. (Exhibit B, pages 39, 66)
3. Specifically, his services have included targeted case management; behavioral supports; community living supports (CLS); respite care services; and occupational therapy. (Exhibit B, page 41; Testimony of Deputy Director).
4. On July 5, 2023, Respondent's Behavior Treatment Plan Review Committee reviewed Petitioner's restrictive behavior plan, which had been in place since July 22, 2022, and recommended that it be discontinued given Petitioner's improvement. (Exhibit B, pages 105-108).
5. On July 25, 2023, Respondent completed both a DLA-20 Assessment and an Annual Biopsychosocial Assessment with respect to Petitioner. (Exhibit B, pages 39, 75).
6. In the Annual Biopsychosocial Assessment, it was noted in part that:

[Petitioner] historically demonstrated behavioral concerns when it comes to interacting with younger children and animals. After being monitored he is improving on this and no longer needs restrictive supervision. [Petitioner] requires assistance with ADL's and maximizing his independence. He needs assistance with grocery shopping, cooking, and learning to use public transportation.

* * *

[Petitioner] requires prompting and reminders in order to manage his time throughout the day. [Petitioner] has a normal wake/sleep cycle. He gets at least 8 hours of sleep each night. [Petitioner] is able to engage in leisure activities without any assistance.

[Petitioner] requires verbal prompts to stay focused on a given task. [Petitioner] does need assistance accessing his community and remaining safe while out in the community.

* * *

[Petitioner's] mother [REDACTED] reported that his behavior can be his biggest barrier, however he is greatly overtime [sic].

* * *

[Petitioner] lives with his parents and his two sisters in the family home. [Petitioner] has looked at some semi-independent placement, but did not like them. He wishes to stay at home with his family to continue to grow his independence in hopes of living on his own one day. [Petitioner] has his own bedroom at his current home where he is [sic] happy and all needs are being met.

Due to recent trauma in the family, with both of [Petitioner's] sisters getting into a car accident along with his mom's health declining. His parents are considering [Petitioner] goes to stay with family until his sisters [sic] conditions improve. [Petitioner] states that this is okay, as he knows his parents need to focus on his sisters getting better. [Petitioner] also had been worried about them and helping out around the house more.

* * *

[Petitioner] attends Shiawassee RESD in Corunna, e received his letter of completion this past May. He is looking to attend the Learning Center-East this fall. He has a full IEP in place, that will be reviewed this upcoming fall.

* * *

[Petitioner] lacks judgement in comprehending situations that could possibly be unsafe and lacks the judgement of others [sic] intentions. He can easily be taken advantage of. He struggles with thinking about the future and his actions vs. consequences.

[Petitioner] does not have the concept of “stranger danger”, he believes everyone is his friend. [Petitioner] requires supervision to monitor his health and safety. [Petitioner] is known to harm animals and small children if left alone with them, he has improved on this and can identify when he needs to step away from the situation. [Petitioner] lacks the safety skills in the kitchen and does need oversight to ensure he is safe at all times. [Petitioner] and his support team are working on learning the safety skills needed for the kitchen. [Petitioner's] mother reports that [Petitioner] does know how to call her if needed. Her mother allows him to stay home with his other siblings and alone for at least 30 minutes to 1 hour. [Petitioner] lacks boundaries in relationships and learning about boundaries in his relationship with his girlfriend. [Petitioner] needs assistance with learning money management skills.

* * *

[Petitioner] participated in the DLA-20 assessment and endorsed a score of 4.6 meaning moderate impairments in functioning last year. This year score has increased to 5.17 meaning mild impairment in functioning.

Exhibit B, pages 39, 42-43, 53, 60

7. The same day as the assessments, Petitioner and his guardian participated in his person-centered plan (PCP) pre-planning. (Exhibit B, pages 63-64).
8. On August 8, 2023, the PCP meeting was held, during which it was recommended that Petitioner continue living in the family home where his needs are being met and where he is working on maximizing his independence skills. (Exhibit B, page 65).
9. On September 7, 2023, during a Targeted Case Management meeting, Petitioner reported that he was doing well and that he was moving up a level in his classes after being in school for a week. (Exhibit B, page 89).
10. On October 12, 2023, during a Targeted Case Management meeting, both Petitioner and his mother/guardian reported everything as going well. (Exhibit B, page 91).

11. However, Petitioner's guardian also subsequently requested a specialized residential placement for Petitioner. (Testimony of Deputy Director).
12. On November 1, 2023, Respondent determined that Petitioner's request should be denied. (Exhibit A, pages 1-2).
13. Specifically, it was found that:

[Petitioner] does not show clinical necessity for high acuity level of care based on documentation in the record and his decrease in behaviors over time. He no longer requires a restrictive behavior plan and is showing substantial gains. High acuity would be a highly restrictive environment and current data does not support.

Exhibit A, page 1

14. On November 22, 2023, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit #1, page 2).
15. On December 4, 2023, Respondent sent Petitioner a Notice of Appeal Denial stating that the earlier denial of services had been upheld after review. (Exhibit B, pages 1-10).
16. On January 4, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed on Petitioner's behalf in this matter. (Exhibit #1, pages 1-3).

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 services through Respondent in his family home in the community while his guardian has now requested a specialized residential placement for him.

With respect to the location and medical necessity of services through Respondent, the applicable version of the Medicaid Provider Manual (MPM) states in part:

2.3 LOCATION OF SERVICE

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

* * *

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, October 1, 2023 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 10, 13-15*

Moreover, regarding Specialized Residential services specifically, Respondent's internal policy with respect to levels of care states in part:

Specialized Residential

Specialized residential includes a wide variety of covered services with the provision of these services expected to be individualized to the needs of the consumer. Therefore, creating a range of intensity based on consumer population. These programs offer a structured regime of 23-hour personal care that is designed and structured for consumers with a severe mental illness and/or cognitive impairment needing enhanced staffing in a secure residential setting to address multiple issues (social, behavioral, safety, activities of daily living, chronic biomedical, etc.), but do not require the full resources of an acute general hospital or medically managed individual program.

Exhibit B, page 23

Here, Respondent denied Petitioner's request for a specialized residential placement pursuant to the above policies and on the basis that it was not medically necessary for Petitioner.

In support of that decision, Respondent's Deputy Director of Habilitative Services testified regarding her review of Petitioner's request for a level of care change and specialized residential placement, and why such a placement was not medically necessary. Specifically, she emphasized the documentation regarding Petitioner's gains and improvement, including the removal of his behavioral plan, over the years with his current services. She also recommended that Petitioner investigate an Adult Foster Care (AFC) home with personal care, which would meet his needs and be less restrictive than the placement he requested.

Petitioner's Case Coordinator with Respondent likewise testified that, while Petitioner cycles per his parent, Petitioner's behavior has improved during her time working with him in the last few years.

Respondent's representative further testified regarding her review of the Internal Appeal and her findings regarding Petitioner's significant gains since 2019, including findings that Petitioner can be left alone for an hour at a time; he no longer needs a behavior plan; and that he has moved up in school. She also noted that Petitioner is doing well with his current services, but that his CLS could be increased if necessary and that such less restrictive services can meet his needs.

In response, Petitioner's representative testified that she appreciates all of Respondent's assistance, but that Petitioner is more than just words on paper and that his behavior cycles; his learning has capped; and she worried about the safety of other people given the risk of Petitioner going off. She also testified that Petitioner is only doing as well as he is due to the constant supervision he receives from his supports and that, while he has made really good progress, he just recently attacked two young relatives and he still wears pull-ups. Petitioner's representative further testified that Petitioner wants to be out of the family home, but that she is not familiar with the differences between a specialized residential placement and a normal AFC home.

Petitioner's cousin/former caretaker similarly testified that Petitioner has come a long way, but that he still has significant needs, including help with his pull-ups; daily prompting; and finances. She also testified that Petitioner only does well because of constant supervision.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his request. 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 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.

It is undisputed in this case that Petitioner has extensive care needs, but he has also been approved for a significant amount of services for that reason and the record further reflects that he is doing well and improving with his current supports, including both paid and natural supports, and Petitioner has failed to show that his current needs rise to the level of a more restrictive specialized residential placement.

Moreover, while Petitioner's representative raised the possibility of Petitioner transitioning out of the family home now that he is an adult, and such a move could lead to additional or different services, that potential move alone does not justify a specialized residential placement and the parties would need to explore less restrictive options first.

To the extent Petitioner's circumstances change or his representative has additional or updated information to provide, then Petitioner's representative can always request a specialized residential placement 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 denied Petitioner's request for a special residential placement.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.



Steven Kibit
Administrative Law Judge

SK/sj

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 12th day of March 2024.

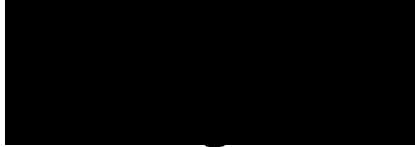
S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Authorized Hearing Representative



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Petitioner

