



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: November 7, 2024
MOAHR Docket No.: 24-010260
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a hearing was held on October 24, 2024. [REDACTED]
Petitioner's father, appeared and testified on Petitioner's behalf.

George Motakis, Fair Hearing Officer, appeared on behalf of Respondent, Lakeshore Regional Entity, the PIHP for Network 180 (Respondent of CMH). Karissa Wight, Clinical Liaison, Network 180; and Michelle Anguiano, Customer Service Manager, appeared as witnesses for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request for services under the serious emotional disturbance waiver (SEDW)?

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 not currently a Medicaid beneficiary but is insured through Blue Care Network via his father's insurance. (Exhibit 4; Testimony.)
2. Petitioner is diagnosed with autism spectrum disorder, major depressive disorder, and anxiety disorder. (Exhibit 4, pp 3, 14; Testimony.)
3. Petitioner's parents are divorced, and Petitioner lives 50% of the time at each parent's home. (Exhibit 4, p 5; Testimony.)

4. Petitioner attends the autism classroom at [REDACTED] Middle school. (Exhibit 4, p 4; Testimony.)
5. Petitioner has shown an increase in behavioral issues and aggression during the past year and has been restrained and secluded 19 to 20 times at school. The previous year, Petitioner was only restrained once. (Exhibit 4; Testimony.) Petitioner has scratched and hit peers and teachers leaving bruises and his academic progress has suffered. (*Id.*) Petitioner has also been throwing fits on a daily basis that have lasted up to two hours at a time. (*Id.*)
6. In July 2024 while with his mother, Petitioner had an incident where he escalated aggression, and the police were called to help handle him. (*Id.*) Petitioner was taken to Helen Devos Hospital and given medication to calm down. (*Id.*) Petitioner was later able to go home. While Petitioner was in Florida, he was also taken to the hospital due to aggressive behavior. (*Id.*) Also, this past spring, Petitioner started running away and eloping. (*Id.*) Petitioner will want something and will walk out to get the thing he wants without awareness of his surroundings, which has caused his father and aunt to have to restrain him. (*Id.*)
7. On June 16, 2024, Petitioner walked out of his mother's apartment early in the morning and walked to 10-mile road where a stranger picked him up and drove him to the police. (*Id.*) Due to this incident, a CPS investigation was opened and is currently being investigated. (*Id.*)
8. In July 2024, Petitioner's father submitted a request for Petitioner to be evaluated to receive services under the SEDW. (*Id.*)
9. Following an assessment, Respondent determined that Petitioner did not meet the criteria for the SEDW. (*Id.*)
10. On July 18, 2024, Respondent sent Petitioner a Notice of Adverse Benefit Determination (NABD) informing Petitioner that the request for services under the SEDW was denied for failure to meet the diagnostic or state inpatient psychiatric criteria. (Exhibit A; Testimony)
11. On August 1, 2024, Petitioner requested an Internal Appeal. (Exhibit B; Testimony)
12. On August 22, 2024, after reviewing Petitioner's appeal, Respondent sent Petitioner a Notice of Appeal Denial, which upheld the original findings. (Exhibit D; Testimony). Specifically, the Notice indicated:

You asked for the SED (Serious Emotional Disturbance) Waiver. Your child has been diagnosed with Autism. Autism does not qualify someone for the SED waiver. Your child

also does not meet the criteria for state psych (*sic*) hospitalization for children. This service has been denied. (Exhibit D; Testimony.)

13. On September 16, 2024, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit F)

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.

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...

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 Michigan Department of Health and Human Services (MDHHS) operates a section 1915(b) Medicaid Managed Specialty Services waiver. Respondent contracts with MDHHS to provide specialty mental health services. Services are provided by Respondent pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service.

Medicaid policy in Michigan is found in the Medicaid Provider Manual (MPM). Policy for the SEDW is found in the Children With Serious Emotional Disturbances Home and Community-Based Services Waiver Appendix:

SECTION 1 – GENERAL INFORMATION [CHANGE MADE 4/1/24]

The Children With Serious Emotional Disturbances Home and Community-Based Services Waiver (SEDW) provides services that are enhancements or additions to Medicaid State Plan coverage for beneficiaries up to age 21 with serious emotional disturbance (SED) who are enrolled in the SEDW. MDHHS operates the SEDW through contracts with the PIHPs. The SEDW is a managed care program administered by the PIHPs in partnership with CMHSPs and other community agencies. **(revised per bulletin MMP 23-65)**

1.1 KEY PROVISIONS [CHANGES MADE 4/1/24]

The SEDW enables Medicaid to fund necessary home and community-based services for beneficiaries up to age 21 with SED who meet the criteria for admission to a state inpatient psychiatric hospital and/or who are at risk of hospitalization without waiver services. The PIHP is responsible for assessment of potential waiver candidates.

Application for the SEDW is made through the PIHP. The PIHP is responsible for the coordination of the SEDW services. The Wraparound Facilitator, the beneficiary and their family and friends, and other professional members of the planning team work cooperatively to identify the beneficiary's needs and to secure the necessary services. All services and supports must be included in an IPOS.

A SEDW beneficiary must receive at least one SED waiver service, in addition to Wraparound, per month in order to retain eligibility. **(revised per bulletin MMP 23-65)**

1.2 ELIGIBILITY [CHANGES MADE 4/1/24]

To be eligible for this waiver, the beneficiary must meet all the following criteria.

- **(text deleted per bulletin MMP 23-65)**
- **Text deleted per bulletin MMP 23-65)**
- Reside with the birth or adoptive family or have a plan to return to the birth or adoptive home; OR
- Reside with a legal guardian; OR
- Reside in a foster home with a permanency plan; OR
- Be age 18, 19 or 20 and live independently with supports; AND
- Meet current MDHHS criteria for the State psychiatric hospital for children or is at risk of hospitalization without waiver services; AND
- Meet Medicaid eligibility criteria and become a Medicaid beneficiary; AND
- Demonstrate serious functional limitations that impair their ability to function in the community. As appropriate for age, functional limitation will be identified using the Child and Adolescent Functional Assessment Scale (CAFAS®), the Preschool and Early Childhood Functional Assessment Scale (PECFAS®), or the Devereux Early Childhood Assessment (DECA) Clinical Version scales:
 - CAFAS® score of 90 or greater for beneficiaries ages 7 to 12; OR
 - CAFAS® score of 120 or greater for beneficiaries ages 13 to 18; OR
 - For beneficiaries ages 3 to 7, elevated PECFAS® subscale scores in at least one of these areas: self-harmful behaviors, mood/emotions, thinking/communicating or behavior towards others; OR

- For beneficiaries ages 2 to 4, scores in the concern range across DECA Clinical Version scales:
 - Protective factor scales (initiative, self-control, and attachment) that are in the Concern Range with a Total Protective Factor T-score of 40 or below; and/or
 - Elevated scores on one or more of the behavioral concerns 32 scales (attention problems, aggression, withdrawal/depression, emotional control problems) with a T- score of 60 or above; AND
- Be under the age of 18 when approved for the waiver. If a beneficiary on the SEDW turns 18, continues to meet all non-age-related eligibility criteria, and continues to need waiver services, they can remain on the waiver up to their 21st birthday. **(text revised and added per bulletin MMP 23-65)**

*Medicaid Provider Manual
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Children With Serious Emotional Disturbances Home and Community-Based
Services Waiver Appendix
July 1, 2024, pp B1-B2*

Respondent's Clinical Liaison (CL) testified that she holds a Bachelor's and Master's degree in Social Work and works at Network 180 as a CL. Respondent's CL testified that she was familiar with Petitioner's case as she conducted the assessment for the SEDW. Respondent's CL testified that Petitioner has struggled with his behaviors and escalation, which makes life difficult for Petitioner's family. Respondent's CL indicated that the review usually looks back 1 year and the CAFAS looks back 3 months. Respondent's CL explained that the purpose of the SEDW is to provide services in addition to what would be covered under the state plan to allow beneficiaries to remain in their homes. Respondent's CL testified that to be eligible for the SEDW, certain criteria must be met.

Respondent's CL testified that Petitioner's father participated in the assessment, and she reviewed the report Petitioner's father provided from the autism clinic. Respondent's CL testified that Petitioner met the CAFAS criteria by scoring a 110 (90 is required for his age group), but did not meet the state psychiatric hospitalization criteria. Respondent's CL explained that while Petitioner demonstrated some serious functional limitations in the community, towards others, in school, and at home, he was not at risk for inpatient hospitalization at the time of the assessment.

Respondent's CL also testified that Petitioner's primary diagnosis is autism, which is not an eligible diagnosis for the SEDW because it is considered an intellectual developmental disability (IDD), not an SED. Respondent's CL noted that while

Petitioner had ancillary diagnoses of major depressive disorder and anxiety disorder, those stemmed from his autism and were not primary diagnoses. Respondent's CL testified that Petitioner would be eligible for services through the Children's Waiver (CWS), which are very similar to the services offered through the SEDW. Respondent's CL indicated that Petitioner's father declined to pursue CWS for Petitioner due to the wait list for that program. Respondent's CL indicated that if Petitioner had a primary diagnosis of major depressive disorder, he might meet the criteria for the SEDW.

Respondent's Customer Service Manager (CSM) testified that she also holds a master's degree in social work, and she was assigned to complete Petitioner's appeal review. Respondent's CSM indicated that after a review of Petitioner's record, she agreed that Petitioner did not meet the criteria for SEDW due to not meeting the criteria for inpatient psychiatric hospitalization and his diagnosis of autism (IDD v SED). Respondent's CSM noted that it was not reported that Petitioner has ever been in an inpatient psychiatric setting.

Petitioner's father testified that in February this year, Petitioner's behaviors got a lot worse, with Petitioner becoming more aggressive and ruminating on things. Petitioner's father indicated that it became close to obsessive compulsive behavior so that's when his doctor added the anxiety diagnosis. Petitioner's father testified that Petitioner would get extremely agitated and aggressive, run out of school, the house, and was aggressive with other kids, teachers, and his family.

Petitioner's father indicated that he became concerned so contacted Network 180 in May 2024. Petitioner's father testified that the person he spoke to at Network 180 recommended inpatient at [REDACTED] if Petitioner's behaviors became imminent. (See Exhibit 3.) Petitioner's father noted that on July 4, 2024, Petitioner threw a fit at his mother's apartment that lasted several hours during which he made several attempts to leave the apartment. Petitioner's father indicated that Petitioner's mother did everything she could to calm Petitioner down but finally had to call the police, who took Petitioner to the ER. Petitioner's father indicated that Petitioner was given medication to calm him down and sent home.

Petitioner's father testified that 4 days later he met with Petitioner's ABA provider who told him that behavioral interventions with Petitioner were no longer safe, and she also recommended inpatient treatment for Petitioner. (See Exhibit 2.) Petitioner's father indicated that on July 9, 2024, he met with Petitioner's psychiatrist, who also recommended inpatient treatment. (See Exhibit 1.)

Petitioner's father testified that on July 11, 2024, he attended the assessment for the SEDW at Network 180. Petitioner's father indicated that he presented as much information as he could while also trying to care for Petitioner, who was present, and who is severely autistic. Petitioner's father noted that he was also trying to take care of Petitioner's two [REDACTED]-year-old sisters. Petitioner's father testified that he told the assessor that he would provide any additional information needed and the information contained in his exhibits was provided.

Petitioner's father testified that he is trying to keep Petitioner in the community. Petitioner's father indicated that while the CWS was recommended, he knows from his own experience (having worked for CMH for 14 years) that the waitlist for CWS has over 200 children on it, and chances of Petitioner getting into that waiver are remote. Petitioner's father indicated that he knows Petitioner qualifies for the SEDW due to his diagnosis of major depressive disorder.

Because Petitioner is seeking a Medicaid covered service, he must prove, by a preponderance of the evidence, that he is eligible for that service and that Respondent's decision was improper.

Based on the evidence presented, Petitioner has proven, by a preponderance of the evidence, that Respondent improperly denied Petitioner's request for SEDW services at the time the decision was made. As indicated above, Medicaid policy provides, "The SEDW enables Medicaid to fund necessary home and community-based services for beneficiaries up to age 21 with SED who meet the criteria for admission to a state inpatient psychiatric hospital and/or who are at risk of hospitalization without waiver services." (Emphasis added.)

In addition, the Michigan Mental Health Code defines serious emotional disturbance as "a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year . . . 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." (MCL 330.1100d(3); Emphasis added.)

Here, Petitioner has an SED, major depressive disorder, which interferes with his functioning in family, school, or community activities; and he is at risk of inpatient psychiatric hospitalization without waiver services. As indicated, Petitioner has been restrained and secluded 19 to 20 times at school during the past year. Petitioner has also been throwing fits on a daily basis that have lasted up to two hours at a time. In July 2024 while with his mother, Petitioner had an incident where he escalated aggression, the police were called, and he was taken to the ER. While Petitioner was in Florida, he was also taken to the hospital due to aggressive behavior. Also, this past spring, Petitioner started running away and eloping. Clearly this is evidence that Petitioner has a condition that interferes with his functioning in family, school, or community activities. As such, Petitioner has an SED.

Regarding Petitioner's risk for inpatient psychiatric hospitalization, in May 2024 a Network 180 representative recommended to Petitioner's father that he seek inpatient psychiatric services at [REDACTED] if Petitioner's behaviors became imminent. (Exhibit 3.) Further, Petitioner's ABA provider concluded that behavioral interventions were no longer working for Petitioner, and he should seek inpatient psychiatric hospitalization. (Exhibit 2.) Finally, Petitioner's psychiatrist recommended that Petitioner seek inpatient psychiatric hospitalization. (Exhibit 1.) This information was provided to Respondent during the assessment, but Respondent did not agree.

This ALJ concludes, however, that this evidence outweighs the opinions of Respondent's witnesses regarding Petitioner's risk for inpatient psychiatric hospitalization. Basically, Respondent argued that Petitioner did not meet the criteria because Petitioner has never been in an inpatient psychiatric hospital and, even if he were, it is unlikely that he would be there long. However, as indicated above, the question is whether Petitioner is at risk of inpatient psychiatric hospitalization, not whether he has ever been in an inpatient psychiatric hospital. Further, the length of time Petitioner might be in an inpatient psychiatric hospital is irrelevant to whether he is at risk for inpatient psychiatric hospitalization. Here, it is more likely than not that Petitioner is at risk for inpatient psychiatric hospitalization.

In addition to arguing that Petitioner was not eligible for the SEDW because he did not meet the criteria for inpatient psychiatric hospitalization, Respondent also argues that Petitioner does not meet SEDW criteria because he does not have a *primary* diagnosis of an SED. However, there is no requirement in the MPM SEDW criteria for Petitioner to have a primary diagnosis of an SED. The policy simply states that a beneficiary must have an SED. Here, Petitioner has an SED. If there is written MDHHS policy or guidance that requires a *primary* diagnosis of an SED to be in the SEDW, Respondent did not provide evidence of that policy or guidance during the hearing.

Therefore, based on the evidence presented, Petitioner met his burden of proof and the Respondent's decision should be reversed.

DECISION AND ORDER

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

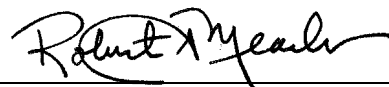
IT IS THEREFORE ORDERED that:

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

Within 10 days of the date of this decision, Respondent shall certify to MOAHR that it has taken actions consistent with this decision, i.e., approved Petitioner to receive services under the SEDW.

If Respondent has written MDHHS policy or guidance indicating that a *primary* diagnosis of an SED is required to be in the SEDW, it may provide that authority and request a reconsideration.

RM/pe



Robert J. Meade
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Contacts

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