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Date Mailed: February 5, 2020
MOAHR Docket No.: 19-011748
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

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

After due notice, a hearing was held on December 12, 2019 and continued on January 30, 2020. [redacted] Law Student; [redacted], Law Student; Mira Edmonds, Supervising Attorney; and Debra Chopp, Supervising Attorney, appeared on behalf of Petitioner. Tiffany Creagh of Nexus Children's Hospital and Kholoud Baydoun, Petitioner's Mother, appeared as witnesses for Petitioner. Dr. Keith Tarter, Chief Medical Director of Molina; and Kimmel Page, Appeals and Grievances Coordinator of Molina, appeared on behalf of Respondent (Molina or Department). Dr. Tarter and Ms. Page also participated as witnesses for the Department. Lauren Sorokolit, Molina Attorney, observed the proceedings.

Exhibits:

Petitioner[2]:

1. Michigan Medicine Pediatric Home Ventilator and Respiratory Support Clinic Note (July 2, 2019).
2. Michigan Medicine Pediatric ICU History & Physical.
3. Michigan Medicine Care Coordination Report (July 23, 2019).
4. Molina Denial Letter (June 21, 2019).
5. Michigan Medicine Appeal to Molina (August 6, 2019).
6. Michigan Department of Health and Human Services Statement of Support (August 6, 2019).
7. Prader-Willi Syndrome Association Statement of Support (August 6, 2019).
8. Fauziya Hassan, MD, and Anne-Marie Ramsey, NP, Statement of Support (November 10, 2019).

[1] [redacted] and Ms. Edmonds appeared on December 12, 2019. [redacted] and Ms. Chopp appeared on both December 12, 2019 and January 30, 2020.

[2] Petitioner's exhibits were not admitted into the record. They are only included here for reference if appealed.

Respondent:

A. Hearing Summary

ISSUE

Did the Department properly deny Petitioner's request for transfer to Nexus Children's hospital?

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 Medicaid beneficiary enrolled in the MHP who was born October 16, 2003. (Exhibit (Ex) A; Testimony.)

2. Petitioner suffers from Prader-Willi syndrome, ADHD, severe obstructive sleep apnea, cor pulmonale with heart failure, folliculitis, gait abnormality, morbid obesity, acute chronic respiratory failure with hypoxia, obesity hypoventilation syndrome, insulin dependence, bilateral edema of lower extremity, hypertension, and noncompliance of CPAP treatment. Petitioner also has behavioral issues and impulsive behaviors. (Ex A; Testimony.)

3. Prader-Willi syndrome is described as:

> … a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone (hypotonia), feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite, which leads to chronic overeating (hyperphagia) and obesity. Some people with Prader-Willi syndrome, particularly those with obesity, also develop type 2 diabetes (the most common form of diabetes).
>
> People with Prader-Willi syndrome typically have mild to moderate intellectual impairment and learning disabilities. Behavioral problems are common, including temper outbursts, stubbornness, and compulsive behavior such as picking at the skin. Sleep abnormalities can also occur. Additional features of this condition include distinctive facial features such as narrow forehead, almond-shaped eyes, and a triangular mouth; short stature; and small hands and feet. Some people with Prader-Willi syndrome have unusually fair

skin and light-colored hair. Both affected males and affected females have underdeveloped genitals. Puberty is delayed or incomplete, and most affected individuals are unable to have children (infertile).[3,4]

4. Petitioner has a history of non-compliance with medical advice and escalating behaviors that interfere with her medical care. (Ex A; Testimony.)

5. In approximately 2009, Petitioner and Petitioner's family attended an inpatient program providing behavioral training for children with Prader-Willi syndrome at The Children's Institute in Pittsburgh, Pennsylvania. Petitioner's family left the training program after four weeks against medical advice and did not complete the program. (Ex A.)

6. On [redacted] 2019, Petitioner was admitted to Pediatric Pulmonary for acute on chronic respiratory failure with hypoxia. Petitioner's mother indicated she was struggling to manage Petitioner's behaviors and was asking for help. Petitioner's mother stated Petitioner had been demonstrating escalating adversarial behaviors and that she was resorting to calling police two to three times a week to assist with behavioral management. A review of Petitioner's pulmonary systems indicated Petitioner was at baseline. Petitioners mother reported Petitioner did not have any coughing or wheezing. A physical examination indicated Petitioner was in no acute distress. Petitioner was admitted for acute on chronic respiratory failure due to non-compliance and escalating behaviors at home interfering with medical care. At the time of the admission, Petitioner weighted [redacted] (Exhibit A; Testimony.)

7. On [redacted] 2019, while admitted, Petitioner and Petitioner's mother talked to a Medical Social Worker. At that time, Petitioner's mother indicated Petitioner was not taking any psychopharmacological medications and was not connected with outpatient mental health/behavioral health services. Petitioner's mother indicated she had spoken to a Child Protective Services worker about alternative living arrangements for Petitioner such as foster care or a residential facility. Petitioner indicated she wanted to be admitted to a hospital to help her lose weight and start medications to help her feel better. (Exhibit A; Testimony.)

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[3] U.S. National Library of Medicine. Genetics Home Reference. Your Guide to Understanding Genetic Conditions. National Institutes of Health, Department of Health and Human Services. ghr.nlm.nih.gov/condition/prader-willi-syndrome. January 30, 2020.

[4] Judicial Notice was taken of this fact under MRE 201. Federal, state and municipal websites, including those of governmental agencies, are considered self-authenticating under Fed. R. Evid 902(5). Because records and the content on government websites are self-authenticating, courts may take judicial notice of the content on federal, state and municipal agencies' websites. In this case, the definition provided is not subject to reasonable dispute as it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

8. On June 5, 2019, Petitioner met with a Behavioral Health Treatment Team as a result of her behavior interfering with medical care in the hospital. The team's summary was as follows:

> . . . She is currently admitted for acute on chronic respiratory failure impacted escalating behaviors interfering with adherence to her medical regimen at home. [Petitioner] has a long history of engaging in behavioral outbursts to gain access to food or desired activities. Escalated outbursts have been shaped up over time by parents giving her what she is wanting contingent on escalated outburst behavior. [Petitioner's] mother particularly struggles with setting and enforcing firm limits and contingencies. [Petitioner's] mother will give her what she is wanting to avoid an outburst or will eventually give her what she is wanting contingent on a prolonged and escalated outburst. Over time, this has led to more severe medical complications, putting her health in serious risk if nonadherence continues. Of particular concern during this admission is that [Petitioner's] mother has been observed to bring [Petitioner] food from outside the hospital, including candy bars, indicating that she continues to struggle with complying with [Petitioner's] dietary restrictions. [Petitioner] and her family express understanding of the importance of following a restricted diet for her health but require significant assistance with behavioral training to follow through consistently with behavioral strategies that will effectively address outburst behavior to obtain access to preferred food and activities. (Ex A.)

9. The Behavioral Health Treatment Team indicated Petitioner was not progressing towards her goals and that Petitioner had psychological factors that impacted Petitioner's medical condition. The Team recommended the use of a sitter if Petitioner and/or Petitioner's mother continued to struggle with adhere to the treatment plan. (Ex A.)

10. On June 6, 2019, Petitioner met with Child and Adolescent Psychiatry for a behavioral management/control and aggression consultation. At the time of the consultation, Petitioner was unknown to the unit's psychiatric consult-liaison service. Petitioner was assessed with the following:

> [Petitioner] is a [redacted]year-old female admitted for acute on chronic respiratory failure and escalating behaviors interfering with medical care. Her behavioral outbursts, lack of multiple support systems, and manipulative behaviors

> indicate multiple psychosocial concerns. To begin, we are recommending that [Petitioner] continue her Adderall along with restarting her guanfacine. We will assess for additional medication adjustments after further assessment and conversation with family. We will provide the family with additional resources for outpatient support. This family and patient would significantly benefit form intense outpatient services. We will attempt to help them set ups this support. We will continue to monitor [Petitioner] through her admission.
>
> [Petitioner] has done well overall with behavioral restrictions and limitation. Mom continues to bulk [*sic*] at these interventions but has been absent from the bedside a significant portion of the time. We will continue her psychotropic regimen at this time. We will continue to follow. (Ex A.)

11. On June 6, 2019, the University of Michigan C.S. Mott Children's Hospital made a referral on behalf of Petitioner recommending Petitioner be treated at the PWS HealthBridge to continue health weight loss, oxygen weaning, physical therapy (PT), occupational therapy (OT) and speech therapy (ST) along with evaluation, treatment and behavior/medication stabilization. An order related to the request indicated the order was for "Behavior Therapy – Outside Facility". (Ex A.)

12. At some point in time, Petitioner underwent a pre-admission evaluation for admission to HealthBridge Children's Hospital Houston. At the conclusion of the evaluation, the evaluating medical doctors indicated Petitioner would be admitted for diet and nutrition management assistance. The clinicians also indicated Petitioner would receive psychiatric and psychological evaluation and services to stabilize moods and help to lessen food seeking behaviors and would be closely monitored from a respiratory standpoint and treated as determined necessary. (Ex A.)

13. On June 21, 2019, the Department received a request from the University of Michigan for transfer of Petitioner to an out of state facility for treatment. (Ex A; Testimony.)

14. As of June 27, 2019, Petitioner weighed [redacted]. (Ex A.)

15. On June 21, 2019, the Department sent Petitioner a notice of denial. The notice stated in part:

> The request to an out of state multidisciplinary Prader-Willi Clinic is denied. There are multiple providers in the state of

> Michigan who can manage the member's syndrome and disease processes in the state of Michigan and all of those options had neither been explored or exhausted. This is denied per the Michigan Department of Community Health Medicaid Provider Manual, General Information, 7.3 Out of State/Beyond Borderland Providers, out-of-state, non-emergent services are not a covered benefit if the services can be received within the State of Michigan. (Ex A.)

16. On September 13, 2019, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

17. As of January 30, 2020, Petitioner weighed approximately [redacted]. (Testimony.)

18. Petitioner attends school. Petitioner's diet is well controlled by the school. (Testimony.)

19. Petitioner likes to stay in the hospital because they have play time and lots of things to do including parties two times a week. (Testimony.)

20. Since May of 2019, Petitioner has been doing better now with her respiratory issues as she is trying different masks. (Testimony.)

21. In the fall of 2019, Petitioner has began seeing a psychiatrist. (Testimony.)

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.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

> The Michigan Department of Health and Human Services (MDHHS) contracts with Medicaid Health Plans (MHPs),

> selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDHHS website. (Refer to the Directory Appendix for website information.)
>
> MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.[5]

In this case, the Department utilized the criteria from Section 7.3 of the General Information for Providers chapter of the MPM to review Petitioner's request for services from an out of state/beyond borderland provider:

> **7.3 OUT OF STATE/BEYOND BORDERLAND PROVIDERS**
>
> Reimbursement for services rendered to beneficiaries is normally limited to Medicaid-enrolled providers. MDHHS reimburses out of state providers who are beyond the borderland area if the service meets one of the following criteria:
>
> - Emergency services as defined by the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and the Balanced Budget Act of 1997 and its regulations; or

[5] MPM, Medicaid Health Plans, April 1, 2019, p 1.

- Medicare and/or private insurance has paid a portion of the service and the provider is billing MDHHS for the coinsurance and/or deductible amounts; or
- The service is prior authorized by MDHHS. MDHHS will only prior authorize non-emergency services to out of state/beyond borderland providers if the service is not available within the state of Michigan and borderland areas.[6]

Pursuant to the above MPM policy, the Department denied Petitioners request and indicated the treatments Petitioner was seeking could be provided within the state of Michigan. The Department went on to indicate that Petitioner's medical conditions are all secondary to Petitioner's behavioral issues and that Petitioner's hospitalizations are a direct result of Petitioner's failure to adhere to provider recommendations.

Petitioner argues that the Department is required to cover medically necessary treatments that ameliorate conditions in pediatric patients. Petitioner goes on to indicate that a transfer of Petitioner to Nexus Children's Hospital and treatment there is medically necessary. Petitioner points out that the Department has provided behavioral and mental health services in the past but the reason why the behavioral treatment is ineffective is because the behavioral and medical components are inseverable due to Petitioner's Prader-Willi diagnosis. As a result, Petitioner requires an integrated interdisciplinary approach to address Petitioner's medical symptoms alongside her behavioral symptoms. Petitioner then points out that the only facility in the United States that has a specialized Prader-Willi Syndrome in-patient treatment program for pediatric patients is Nexus Children's Hospital in Houston, Texas.

Based upon a complete review of the medical records provided and the testimony provided, I find the Petitioner to have failed to meet their burden to show the Department erred in denying Petitioner's request.

While the evidence clearly shows the Petitioner as needing assistance with weight loss and behavioral issues, the evidence does not show that these needs can only be met via inpatient care at an out of state facility; nor does it indicate there is only one facility in the United States that is available and capable of treating Petitioner's conditions.

The evidence clearly shows that Petitioner's primary issue is her behavior and inability to follow recommended medical advice. Furthermore, the evidence shows that Petitioner's conditions are exasperated by the Petitioner's mother's inability to follow recommendations and advice. Furthermore, it is clear, that Petitioner's medical needs are all secondary to Petitioner's behavioral needs and that the behavioral needs appear to be associated with the mother's noncompliance. The evidence indicates that while Petitioner was being treated in June of 2019, Petitioner was able to lose approximately [redacted] pounds and that during this time, the mother was mostly absent from treatment. The

[6] MPM, General Information for Providers, April 1, 2019, p 17.

evidence also indicates that within this time frame, the Petitioner was not having any significant health complications. Additionally, the evidence shows the Petitioner only recently began treating with a psychiatrist. And while Petitioner has regained approximately [redacted] pounds, it is unclear how much Petitioner's mother may have contributed to the relapse. Moreover, evidence of group therapy, family therapy, behavioral therapy, Community Living Supports and respite services are not addressed, and it does not look like these types of therapy and treatment were explored or tried.

The Department must have available and provide, at a minimum, the appropriate medically necessary covered services and must ensure that the services are sufficient in amount, duration, or scope to reasonably achieve the purpose for which the services are furnished.[7] In this case, the Department has provided sufficient evidence to show they are capable and able to furnish all of the services being offered by the Nexus Children's Hospital in Houston, Texas and furthermore that while Petitioner was receiving these services, her conditions had improved (July and August of 2019). Consequently, I find sufficient evidence to affirm the Departments decision in this matter.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for transfer to Nexus Children's hospital.

IT IS, THEREFORE, ORDERED that:

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

CA/sb

Corey Arendt
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

[7] State of Michigan Contract No. Comprehensive Health Care Program for the Michigan Department of Health and Human Services. FY 19.

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

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI
48919

Petitioner

[redacted]
MI

Counsel for Petitioner

Mira Edmonds
2076 South Hall
701 S State St
Ann Arbor, MI
48109

Community Health Rep

Molina Healthcare of Michigan
Chasty Lay
880 W. Long Lake Rd., Suite 600
Troy, MI
48098