



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: April 15, 2020
MOAHR Docket No.: 20-001080
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 April 2, 2020. [REDACTED] Petitioner's father and legal guardian, appeared and testified on Petitioner's behalf. Shawn Dilts, Supervisor of Access and Utilization Management, appeared and testified on behalf of the Respondent Shiawassee County Community Mental Health.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1, pages 1-7. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-20.

ISSUE

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

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 a legal guardian and who resides in an Adult Foster Care (AFC) home. (Exhibit #1, page 4; Exhibit A, page 9; Testimony of Petitioner's representative).
2. Petitioner has also been approved for services through Respondent, including Occupational Therapy (OT) and five days per week of skill-building services at a day program. (Exhibit A, pages 10-11; Testimony of Petitioner's representative; Testimony of Respondent's representative).

3. The services were authorized in support of Petitioner's goals of increasing his ability to communicate, independence, community activities, gross motor skills, and fine motor skills. (Exhibit A, pages 9-11).
4. The staff at Petitioner's AFC home do not assist him with those goals or reinforce skills taught at Petitioner's skill-building program or therapy. (Exhibit A, pages 9-11; Testimony of Respondent's representative).
5. On November 25, 2019, Petitioner's Case Coordinator submitted a Level of Care Change Request to Respondent asking that Petitioner be placed in a specialized residential placement. (Exhibit A, pages 9-11).
6. As part of that request, the Case Coordinator indicated that, while Petitioner is maintaining at his baseline, he is not reaching his full potential because his training is not being reinforced in his current living environment. (Exhibit A, page 11).
7. On December 19, 2019, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that the request was denied on the basis that a specialized residential placement is not medically necessary. (Exhibit A, pages 12-15).
8. Petitioner's guardian subsequently requested an internal appeal with Respondent regarding that decision. (Exhibit A, page 17).
9. On January 31, 2020, Respondent sent Petitioner a Notice of Appeal Denial. (Exhibit #1, pages 5-7).
10. In part, that notice stated:

We Denied your internal appeal for the service(s)/items(s) listed above because:

A thorough review of [Petitioner's] medical record was completed by Dr. Razan Adam, SHW Medical Director. Dr. Adam was not involved in the initial determination that resulted in the Adverse Benefit Determination and based on his credentials Dr. Adam is qualified to make this determination.

Before the local appeal (guardian initiated), the SHW Case Coordinator submitted a Level of Care Change Request. The request for high acuity services was denied, based on medical necessity. The Case Coordinator appealed this utilization management decision to the

Medical Director, Razvan Adam, who also determined that medical necessity was not met for high acuity services, specifically specialized residential.

Dr. Adam determined that staff should be responsive to the goals set forth in the PCP, and an AFC with such an expectation should be sought. He concluded that [Petitioner] does not appear to require specific behavioral emergent interventions and there is [sic] no additional needs that requires personal care at any other times, other than when scheduled. He further indicated that trained staff, responsive to the requests of the PCP, in addition to the Employment and Skill Building (ESB) program, while [Petitioner] resides in assisted living, would suffice. Therefore, Dr. Adam concluded that [Petitioner] would NOT need specialized residential placement, as defined by the 24-hrs personal care staffed environment.

In conclusion, it is determined that medical necessity continues to be lacking for high acuity services, specifically specialized residential. Much of what is being sought can, and should be, provided while [Petitioner] is participating in the Employment and Skill Building program. Documentation demonstrates that his AFC placement can attend to [Petitioner's] basic daily needs and has been successful at doing that.

Exhibit #1, page 5

11. On February 19, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to the denial of Petitioner's request for specialized residential placement. (Exhibit #1, pages 1-7).

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).

Medicaid beneficiaries are 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. See 42 CFR 440.230.

Regarding the location of such services, the applicable version of the Michigan 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.

*MPM, October 1, 2019 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Page 10*

Moreover, 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, October 1, 2019 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 14-15*

Here, as discussed above, Respondent denied a request for a specialized residential placement for Petitioner. Petitioner's guardian then appealed that decision.

In doing so, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred. Moreover, the undersigned Administrative Law Judge is limited

to reviewing Respondent's decision in light of the information it had at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. It is undisputed that the services and training that Petitioner is receiving through Respondent are not being reinforced in his current living arrangement, but that alone does not warrant a residential placement. The above policy still requires that Petitioner's services be provided in the least restrictive, most integrated setting that can meet his needs, with licensed residential settings only being used when less restrictive levels of treatment, service or support have been unsuccessful or cannot be safely provided, and the record does not reflect such circumstances in this case given that Petitioner's current AFC home in the community is less restrictive than a specialized residential placement; Respondent has authorized specific services to meet Petitioner's needs; and it appears those needs are being met. Moreover, even assuming for the sake of argument that Petitioner's needs are not being met, there still has been no showing that Petitioner needs a such a restrictive placement and other, less-restrictive options exist, such as Petitioner moving to a different AFC home or Community Living Supports being authorized.

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 specialized residential placement.

IT IS THEREFORE ORDERED that

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



SK/sb

Steven Kibit
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

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 Department Rep.

Craig Hause - 78
Shiawassee County CMH
1555 Industrial Drive
Owosso, MI
48867

DHHS -Dept Contact

Belinda Hawks
320 S. Walnut St.
5th Floor
Lansing, MI
48913

Petitioner

[REDACTED]
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Authorized Hearing Rep.

[REDACTED]
MI