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Date Mailed: August 10, 2020
MOAHR Docket No.: 20-002428
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on June 4, 2020. [redacted], mother and Guardian, appeared on behalf of the Petitioner. [redacted], current Case Manager, appeared as a witness for Petitioner. Leslie Garrisi, Supervisor, represented the Respondent, Macomb County Community Mental Health (CMH).

During the hearing proceedings, the CMH Hearing Summary packet was admitted as Exhibit A, pp. 1-66, Petitioner's hearing request was admitted as Exhibit 1, pp. 1-3.

ISSUE

Did Respondent properly deny Petitioner's request for adult residential placement 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] year old Medicaid beneficiary, date of birth [redacted] 1970. (Exhibit A, p. 11)

2. Petitioner has multiple diagnoses including: Turner's syndrome, hypothyroidism, hypertension, hyperlipidemia, hearing loss, back pain, bipolar disorder, obsessive-compulsive disorder, and diabetes. (Exhibit A, pp. 17 and 34)

3. Petitioner resides in a private residence with her mother. (Exhibit A, pp. 11-12)

4. On November 15, 2019, an Annual Assessment was completed. (Exhibit A, pp. 11-36)

5. On November 26, 2019, a LOCUS Assessment was completed. (Exhibit A, p. 37)

6. On February 4, 2020, a Person Center Plan (PCP) Meeting (Review of Progress) was held. (Exhibit A, pp. 38-44)

7. On February 6, 2020, an Access Screening was completed regarding Petitioner's mother's request for specialized residential services for Petitioner. (Exhibit A, pp. 54-62)

8. On February 18, 2020, the Adult Specialty Team determined:

> Consumer does not appear to meet criteria for the requested service. She does not have the intensity of impairments in personal care and CLS to necessitate the requested level of care. She is currently receiving minimal outpatient services. It is reasonable to expect that her treatment needs can be met in a less restrictive setting with additional community services. The guardian should discuss additional options with the case manager such as CLS and Respite. If the guardian continues to want a group home then it is recommended that licensed General AFC settings be explored. Request for specialized residential services is denied and due process will be sent.
>
> (Exhibit A, pp. 60-61)

9. On February 18, 2020, a letter was issued to Petitioner's Guardian, indicating the request for adult residential placement was denied because Petitioner does not appear to meet criteria for the requested service. (Exhibit A, pp. 5-10)

10. A local dispute resolution (LDR) was requested and completed. The LDR determination was March 23, 2020. (Exhibit A, p. 2; Supervisor Testimony)

11. On April 20, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed on Petitioner's behalf in this matter. (Exhibit 1, pp. 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 1396(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).

In this case, Petitioner's Guardian is seeking specialized residential services for Petitioner. The Medicaid Provider Manual addresses personal care in licensed specialized residential settings:

> **SECTION 11 – PERSONAL CARE IN LICENSED SPECIALIZED RESIDENTIAL SETTINGS**
>
> Personal care services are those services provided in accordance with an individual plan of service to assist a beneficiary in performing their own personal daily activities. For children with serious emotional disturbance, personal care services may be provided only in a licensed foster care setting or in a Child Caring Institution (CCI) if it is licensed as a "children's therapeutic group home" as defined in Section 722.111 Sec. 1(f) under Act No. 116 of the Public Acts of 1973, as amended. For children with intellectual/developmental disabilities, services may be provided only in a licensed foster care or CCI setting with a specialized residential program certified by the state. These personal care services are distinctly different from the state plan Home Help program administered by MDHHS.
>
> Personal care services are covered when authorized by a physician or other health care professional in accordance with an individual plan of services and rendered by a qualified person. Supervision of personal care services must

be provided by a health care professional who meets the qualifications contained in this chapter.

11.1 SERVICES

Personal care services include assisting the beneficiary to perform the following:

- Assistance with food preparation, clothing and laundry, and housekeeping beyond the level required by facility licensure, (e.g., a beneficiary requires special dietary needs such as pureed food);
- Eating/feeding;
- Toileting;
- Bathing;
- Grooming;
- Dressing;
- Transferring (between bed, chair, wheelchair, and/or stretcher);
- Ambulation; and
- Assistance with self-administered medications.

"Assisting" means staff performs the personal care tasks for the individual; or performs the tasks along with the individual (i.e., some hands-on); or otherwise assists the individual to perform the tasks himself/herself by prompting, reminding, or by being in attendance while the beneficiary performs the task(s).

11.2 PROVIDER QUALIFICATIONS

Personal care may be rendered to a Medicaid beneficiary in a Foster Care or CCI setting licensed and certified by the state under the 1987 Michigan Department of Health and Human Services Administrative Rule R330.1801-09 (as amended in 1995). For children birth to 21, personal care may be rendered to a Medicaid beneficiary in a Child Caring Institution setting with a specialized residential program facility licensed by the State for individuals with I/DD under Act No. 116 of the Public Acts of 1973, as amended, and Act No. 258 of the Public Acts of 1974, as amended.

11.3 DOCUMENTATION

The following documentation is required in the beneficiary's file in order for reimbursement to be made:

- An assessment of the beneficiary's need for personal care.
- An individual plan of services that includes the specific personal care services and activities, including the amount, scope and duration to be delivered that is reviewed and approved at least once per year during person-centered planning.
- Documentation of the specific days on which personal care services were delivered consistent with the beneficiary's individual plan of service.

MPM, January 1, 2020 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services
Pages 78-79

While personal care in a licensed specialized residential setting is a covered service, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. The Medicaid Provider Manual (MPM) sets forth the criteria for medical necessity:

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 costeffective 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, Behavioral Health and Intellectual
and Developmental Disability Supports
and Services Chapter,
January 1, 2020, pp. 14-15

On February 6, 2020, an Access Screening was completed regarding Petitioner's mother's request for specialized residential services for Petitioner. (Exhibit A, pp. 54-62)

On February 18, 2020, the Adult Specialty Team determined:

> Consumer does not appear to meet criteria for the requested service. She does not have the intensity of impairments in personal care and CLS to necessitate the requested level of care. She is currently receiving minimal outpatient services. It is reasonable to expect that her treatment needs can be met in a less restrictive setting with additional community services. The guardian should discuss additional options with the case manager such as CLS and Respite. If the guardian continues to want a group home then it is recommended that licensed General AFC settings be explored. Request for specialized residential services is denied and due process will be sent.
>
> (Exhibit A, pp. 60-61)

The Supervisor explained that it was recommended that the current treatment services be expanded and increased to assist Petitioner with stabilizing and being treated successfully in the community. The LDR recommended Assertive Community Treatment (ACT), which was pursued and authorized. The reviewing clinical noted that if Petitioner's Guardian is looking for an AFC home, a general AFC home should be pursued, which is not managed through specialized residential services. Petitioner does not have the deficits in personal care or community living needs to necessitate the specialized residential services provided through Respondent. (Supervisor Testimony)

Petitioner's mother testified that since the February 2020 determination, Petitioner has gotten way worse. Petitioner's delusions and behavior are just uncontrollable. Petitioner has been back in the hospital two more times, including currently. Petitioner is not doing well and Petitioner's mother does not have the ability to take care of her anymore. Petitioner's mother is also considering giving up the Guardianship to a public administrator. (Mother Testimony)

The Case Manager testified that even though Petitioner has been authorized for the ACT services, she has not yet been receiving those services. The Case Manager has been told there is a wait list. It was noted that Petitioner had been in a group home prior to living with her mother. The Case Manager stated that the current level of care does not seem appropriate as far as maintaining stability. Petitioner has been hospitalized numerous times. There have been multiple medication changes and the Case Manager suspects Petitioner was not taking her medications as prescribed. Petitioner calls doctors, the police, and hospitals to the point where if they did not understand that she is mentally ill, Petitioner would have been charged with phone harassment or stalking many times over. Petitioner has fixed delusions that she is pregnant, even though she is physically incapable due to having Turner's syndrome. This clouds her judgement. Petitioner believes she has a boyfriend named Jim, but he

does not exist. Petitioner says they are going to go live together. It was noted that a previous placement and a board and place with staffing only lasted one day. Petitioner has called the police on her mother and her mother's boyfriend, including unfounded rape allegations and reports of him exposing himself to her. The situation is toxic. Multiple anti-psychotics have been tried, about 20 of them. Petitioner is on a wait list for a behaviorist. (Case Manager Testimony)

Given the evidence and applicable policies in this case, Petitioner has not met her burden of proof regarding the CMH's determination to deny the request for adult residential placement for Petitioner based on the information available at the time of the February 18, 2020, determination. Petitioner had minimal services at that time. Additional services are available in the community that had not been tried. There are also other settings, such as general AFC homes, that should be explored. The evidence did not establish that Petitioner requires the level of assistance with personal care services that necessitate the specialized residential setting. For example, the screening indicates Petitioner had no known issues with activities of daily living (ADLs) such as showering. (Exhibit A, p. 56) Overall, it has not been established that Petitioner's needs cannot be met in a less restrictive setting with appropriate services in place.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied the February 6, 2020, request for adult residential placement for Petitioner based on the information available.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED.**

CL/dh

Colleen Lack
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 -Dept Contact	Belinda Hawks 320 S. Walnut St. 5th Floor Lansing, MI 48913
DHHS-Location Contact	David Pankotai Macomb County CMHSP 22550 Hall Road Clinton Township, MI 48036
Authorized Hearing Rep.	[redacted] [redacted] [redacted] MI [redacted]
Petitioner	[redacted] [redacted] [redacted] MI [redacted]