[redacted], MI [redacted]

Date Mailed: July 8, 2020
MOAHR Docket No.: 20-002815
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 June 23, 2020. Petitioner appeared and testified on his own behalf. Leslie Garrisi, Access Center Supervisor, appeared and testified on behalf of the Respondent Macomb County Community Mental Health.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1, pages 1-6. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-78.

ISSUE

Did Respondent properly deny Petitioner's request for reauthorization of his 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 been diagnosed with schizoaffective disorder. (Exhibit A, pages 10, 18).

2. In 2002, Petitioner was charged with assault with intent to murder and found Not Guilty by Reason of Insanity (NGRI). (Exhibit A, pages 18-19).

3. He subsequently stayed in a state hospital until 2015, before moving to a specialized residential placement in 2019. (Exhibit A, page 21).

4. After his move, Petitioner began receiving services through Respondent. (Exhibit A, pages 36-48).

5. He also began attending a day program on most weekends; and he is free to go into the community at his leisure, though transportation can be an issue. (Exhibit A, pages 10, 49, 59).

6. On April 15, 2029, the NGRI Committee of the Center for Forensic Psychiatry sent Petitioner a letter stating that he had successfully completed his 5-year Authorized Leave Status Contract pursuant to MCL 330.1050(5) as of April 18, 2019. (Exhibit A, page 9).

7. The letter also noted that Petitioner had done quite well with his present treatment and encouraged him to remain in treatment. (Exhibit A, page 9).

8. Even after Petitioner completed his NGRI contract, Respondent continued to approve his specialized residential placement as provided for in Petitioner's Person-Centered Plan (PCP). (Exhibit A, pages 36-48, 59-69).

9. However, as early as November of 2019, Petitioner and his Supports Coordinator also began looking into transitioning Petitioner into his own apartment, with Petitioner's finances being his main concern. (Exhibit A, pages 59-66).

10. On March 5, 2020, Petitioner and Respondent completed a PCP meeting with respect to Petitioner's services for the upcoming plan year, *i.e.* March 20, 2020 to March 19, 2021. (Exhibit A, pages 49-58).

11. Following that meeting, Petitioner requested reauthorization of his specialized residential placement. (Exhibit A, pages 52-54).

12. On March 11, 2020, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that his request was denied. (Exhibit A, pages 3-8).

13. With respect to the reason for the decision, the notice stated:

> The individual completed his NGRI contract successfully in April 2019 and no longer appears to meet criteria for specialized residential services. 60 days of services have been authorized to assist in transitioning the consumer into an independent setting.
>
> *Exhibit A, page 3*

14. On March 10, 2020, Governor Gretchen Whitmer issued Executive Order 2020-4 regarding the "Declaration of State of Emergency" for the State of Michigan.

15. On March 23, 2020, Petitioner requested an Internal Appeal with Respondent regarding its decision. (Exhibit #1, page 5).

16. On April 16, 2020, Respondent sent Petitioner a Notice of Partial Appeal Approval. (Exhibit #1, page 6).

17. In that notice, Respondent upheld its earlier decision, but extended Petitioner's placement for the duration of Michigan's State of Emergency, however long that lasts, plus an additional sixty (60) days. (Exhibit #1, page 6).

18. On May 5, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to Respondent's decision. (Exhibit #1, pages 1-6).

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, January 1, 2020 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, January 1, 2020 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 14-15

Here, as discussed above, Respondent denied a request for reauthorization of a specialized residential placement for Petitioner. Petitioner 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.

The above policies require 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. For example, Respondent's representative credibly explained that, while it has temporarily extended Petitioner's authorization due to extenuating circumstances and to ease Petitioner's transition, Petitioner does not need any services only provided in the specialized residential placement and he no longer meets the criteria for the placement. Petitioner similarly agreed that he does not need any service only provided in the more restrictive placement and that he is ready to move out. Moreover, while Petitioner wants to delay the move because of financial concerns and to wait until he is approved for specific, low-income housing, that argument does not show any medical necessity for the specialized residential placement and does not warrant continued services.

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 reauthorization of his specialized residential placement.

IT IS THEREFORE ORDERED that

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

Steven Kibit

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 -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

Petitioner

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Agency Representative

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48312