[redacted]
[redacted] MI [redacted]

Date Mailed: August 31, 2020
MOAHR Docket No.: 20-003104
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 July 22, 2020. [redacted] and [redacted] parents and Authorized Hearing Representatives (AHRs), represented the Petitioner. Benita Brown, Due Process Coordinator, represented the Respondent, Oakland Community Health Network (OCHN). Dr. Leonard Rosen, Medical Director, and Steffany Wilson, Clinical Director, appeared as witnesses for Respondent. Jasmin White, Manager Utilization Management and Review, was present as an observer.

During the hearing proceedings, the CMH Hearing Summary packet was admitted as Exhibit A, pp. 1-35.

ISSUE

Did Respondent properly deny Petitioner's request for long-term state facility hospitalization?

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 an [redacted] year-old Medicaid beneficiary, born [redacted] (Exhibit A, p. 21)

2. Petitioner's diagnoses include reactive attachment disorder, post-traumatic stress disorder, attention deficit hyperactivity disorder, and a mood disorder. (Exhibit A, p. 6)

3. Petitioner receives services from Easterseals, Respondent's contracted agent for children with serious emotional disturbances. (Exhibit A, p. 1)

4. Petitioner's services from the February 27, 2020, Individual Plan of Service (IPOS) Addendum included: 2 hours per week of home based therapy, medication reviews once per month; 10 hours per week of Community Living Supports (CLS); and 2 hours per month of Wraparound Facilitation. (Exhibit A, pp. 1 and 21-27)

5. Petitioner was hospitalized at Harbor Oaks, February 26, 2020 through March 3, 2020. (Exhibit A, p. 7)

6. Petitioner waited at Common Ground for inpatient placement from March 16-26, 2020, during which multiple PRNs were required. (Exhibit A, p. 7)

7. On March 23, 2020, Easterseals submitted a State Facility Application at the request of Petitioner's representative. (Exhibit A, p. 1)

8. Petitioner was hospitalized at Harbor Oaks March 26, 2020, through April 14, 2020. (Exhibit A, p. 7)

9. OCHN utilizes PREST, an accredited independent review organization, to render medical necessity determinations for the initial and second opinion reviews of requests for long-term state facility hospitalization. (Clinical Director Testimony)

10. On March 27, 2020, Respondent contacted PREST, who reviewed and denied the request for long-term state facility hospitalization. (Exhibit A, p. 1)

11. On March 27, 2020, a Due Process Letter/Notice of Adverse benefit Determination was issued to Petitioner stating the request for state facility admission was denied because the service is not medically necessary based on the information provided. Alternative interventions to state facility that may be considered include: more intensive Outpatient Services that could be provided by an unstructured or structured program. Continuing to focus on trauma-based services and family interventions would also be appropriate. (Exhibit A, pp. 11-15)

12. On April 3, 2020, a second opinion request for long-term state facility hospitalization was made. (Exhibit A, p. 1)

13. On April 3, 2020, a different PREST reviewer denied the second opinion request for long-term state facility hospitalization. (Exhibit A, p. 1)

14. On April 6, 2020, a Due Process Letter/Notice of Adverse benefit Determination was issued to Petitioner stating the second opinion for the request for state facility admission was denied because the service is not medically necessary based on the information provided. Alternative

interventions to state facility that may be considered include: more intensive Outpatient Services that could be provided by an unstructured or structured program; increase frequency of services. Continuing to focus on trauma-based services and family interventions would also be appropriate. (Exhibit A, pp. 16-20)

15. On April 9, 2020, a local appeal was filed with OCHN. (Exhibit A, pp. 2-3)

16. The OCHN local appeal process includes review of the PREST second opinion determination by a Clinical Analyst and the Medical Director.

17. The OCHN Clinical Analyst review was completed on April 15, 2020. The Clinical Analyst described Petitioner's history, diagnoses, current services from the IPOS and recent hospitalizations/programs. The Clinical Analyst indicated Petitioner's IPOS adequately addressed the concern that was the basis of the family's request for state facility services; the services authorized in the IPOS are appropriate in amount, scope, and duration with the exception of respite because no respite was currently authorized. (Exhibit A, pp. 6-7)

18. Petitioner was authorized to begin a step down to New Oakland partial hospitalization program beginning April 15, 2020. (Exhibit A, p. 7)

19. The OCHN Medical Director completed a review on April 28, 2020. The Medical Director upheld the PREST second opinion determination to deny the request for long-term state facility hospitalization. This review supported that Petitioner does not meet the criteria for long-term state facility hospitalization. It was noted that the PREST second opinion denial was clinically appropriate at that time; the PREST second opinion denial is still applicable/appropriate; and following her recent Harbor Oaks hospitalization, Petitioner has been benefiting from intensive services at New Oakland day program with no reported aggressive outbursts. (Exhibit A. p. 6)

20. On April 29, 2020, notice that the denial was upheld through the local appeal process was issued to Petitioner's father. It was also stated the OCHN was requiring Easterseals to reconvene the person-centered planning process and implement numerous recommendations. (Exhibit A, pp. 2-10)

21. On May 21, 2020, Petitioner's request for a state fair hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Hearing Request)

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).

The Mental Health Code defines a person requiring treatment:

330.1401 "Person requiring treatment" defined; exception.

Sec. 401.

(1) As used in this chapter, "person requiring treatment" means (a), (b), or (c):

(a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

(b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.

(c) An individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.

(2) An individual whose mental processes have been weakened or impaired by a dementia, an individual with a primary diagnosis of epilepsy, or an individual with alcoholism or other drug dependence is not a person requiring treatment under this chapter unless the individual also meets the criteria specified in subsection (1). An individual described in this subsection may be hospitalized under the informal or formal voluntary hospitalization provisions of this chapter if he or she is considered clinically suitable for hospitalization by the hospital director.

The MDHHS Medicaid Provider Manual (MPM) addresses 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,
April 1, 2020, pp. 14-15

Respondent asserts that the denials were appropriate because a less restrictive setting in the community with support services authorized in the appropriate amount, scope, and duration can meet Petitioner's needs. Therefore, Petitioner did not meet the criteria for long-term state facility hospitalization. (Exhibit A, p. 1) The Medical Director explained that the PREST second opinion denial was clinically appropriate. Petitioner was receiving appropriate services in the community. The second opinion denial remained applicable and appropriate. Petitioner was receiving evidence-based services in the community, and most recently was benefiting from intensive services at New Oakland Day program and outpatient services provided by Easterseals. There were no reports of aggressive outbursts from the staff at New Oakland or Easterseals. There were no recent visits to Common Ground or interactions with the police at the time of the April 28, 2020, report. Petitioner was responding well to treatment in the community at that time. The Medical Director's testimony was clear that his review considered the current situation at the time of his determination. Petitioner did not meet the Mental Health Code 401 criteria for long term inpatient mental health treatment at a state facility at that time. (Exhibit A, p. 6; Medical Director Testimony)

Petitioner's father notes that the Mental Health Code 401(1)(a) applies when an individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. Events from the medical records in the few months around the time of this request were described. It was asserted that it could reasonably be expected that in the near future

Petitioner would intentionally seriously physically injure someone else. Additionally, it was asserted that Petitioner's needs are not being met in the community. Despite the authorized services, Petitioner has had multiple hospitalizations, been admitted to multiple outpatient programs, and had multiple encounters with the police. Those that know Petitioner best and have been working with Petitioner for years do not recommend restarting trauma therapy. They have tried everything and are not seeing progress or an amelioration of symptoms. The community-based services are not efficacious and intervention is needed. (Father Testimony) Petitioner's mother indicated that when they meet with Petitioner's therapists twice per month, they go over all of this. The consensus is that they need to try long-term state facility hospitalization. (Mother Testimony)

Given the evidence and applicable policies in this case, Petitioner has not met her burden of proof regarding the Respondent's determination to deny Petitioner's March 23, 2020, request for long-term in-patient hospitalization. The evidence indicates there had been an escalation with Petitioner's behaviors over the past few months. Petitioner was hospitalized February 26, 2020, through March 3, 2020; was at Common Ground from March 16-26, 2020, awaiting inpatient placement; and hospitalized again from March 26, 2020, through April 14, 2020. However, Petitioner was authorized to step down to a partial hospitalization/day program beginning April 15, 2020. As of the Medical Director's April 28, 2020, review, it was reported that Petitioner was benefiting from treatment at the day program. Staff from that facility, as well as Easterseals, reported no aggressive outbursts. This did not support a reasonable expectation that within the near future Petitioner would intentionally seriously physically injure someone else. At that time, it appeared that a less restrictive setting in the community with support services authorized in the appropriate amount, scope, and duration could meet Petitioner's needs. Accordingly, Respondent's determination to deny Petitioner's March 23, 2020, request for long-term in-patient hospitalization is upheld.

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 long-term state facility hospitalization based on the information available at that time.

IT IS THEREFORE ORDERED that

The 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 Department Rep.	Benita Brown - 63 Oakland Community Health Network 5505 Corporate Drive Troy, MI 48098
DHHS -Dept Contact	Belinda Hawks 320 S. Walnut St. 5th Floor Lansing, MI 48913
Authorized Hearing Rep.	[redacted] [redacted] MI [redacted]
Petitioner	[redacted] [redacted] MI [redacted]
Authorized Hearing Rep.	[redacted] [redacted] MI [redacted]