

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 10, 2020
MOAHR Docket No.: 20-004085
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 August 25, 2020. [REDACTED], Petitioner's prospective adopted father, appeared and testified on the minor Petitioner's behalf. [REDACTED], Petitioner's foster care worker, also testified as a witness for Petitioner. Lisa Klute, Waiver Wraparound Supervisor, appeared and testified on behalf of the Respondent Macomb County Community Mental Health. Libby Vutvi, Coordinator of Community and Behavioral Health Services, also testified as a witness for Respondent.

During the hearing, Petitioner's Request for Hearing was entered in the record as Exhibit A, pages 1-13. Respondent also submitted an evidence packet that was admitted into the record as Exhibits #1, pages 1-100.

ISSUE

Did Respondent properly terminate Petitioner's enrollment in the Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW)?

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 disruptive mood dysregulation disorder; post-traumatic stress disorder; and attention-deficit/hyperactivity disorder, combined presentation. (Exhibit #1, page 32).

2. He is also currently a ward of the State of Michigan, with the Department of Health and Human Services appointed as his guardian, but his representative/foster father is in the process of adopting him (Exhibit #1, page 12; Testimony of Petitioner's representative).
3. Due to his diagnoses, impairments and need for assistance, Petitioner has been approved for services through Respondent. (Exhibit #1, page 18).
4. On April 29, 2019, Respondent completed a Child & Adolescent Functional Assessment Scale (CAFAS) assessment with Petitioner, during which Petitioner scored a 120. (Testimony of Respondent's representative).
5. Petitioner was subsequently approved for the SEDW and began receiving services through that waiver. (Testimony of Respondent's representative).
6. On July 24, 2019, Respondent completed another CAFAS assessment with Petitioner, during which he again scored a 120. (Testimony of Respondent's representative).
7. In October of 2019, Respondent completed another CAFAS assessment with Petitioner, during which he scored a 110. (Testimony of Respondent's representative).
8. On January 21, 2020, Respondent completed another CAFAS assessment with Petitioner, during which he scored an 80. (Exhibit #1, page 34).
9. On March 17, 2020, Respondent completed an Annual Assessment with respect to Petitioner. (Exhibit #1, pages 10-33).
10. During that assessment, Respondent concluded that, due to a decrease in Petitioner's negative behaviors and his lowered CAGAS score, it was recommended that Petitioner be transitioned out of the SEDW. (Exhibit #1, page 18).
11. Respondent also began developing a Wraparound Transition Plan. (Exhibit #1, pages 36-40).
12. On April 20, 2020, Respondent completed another CAFAS assessment with Petitioner, during which he scored a 70. (Exhibit #1, page 35).
13. On May 11, 2020, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that Respondent was terminating Petitioner's enrollment in the SEDW because Petitioner no longer meets criteria for such services. (Exhibit #1, pages 4-9).

14. On May 19, 2020, Petitioner requested an internal appeal with Respondent regarding that decision. (Exhibit A, page 8).
15. On June 11, 2020, an internal appeal hearing was completed via telephone. (Exhibit A, page 8).
16. On June 16, 2020, a Local Appeals Coordinator issued Findings and Recommendations stating that Respondent's decision should be upheld. (Exhibit A, pages 8-11).
17. On June 18, 2020, Respondent sent Petitioner a Notice of Appeal Denial stating that his internal appeal had been denied, and the termination of his enrollment in the SEDW upheld, because he no longer meets the requirement for SEDW services. (Exhibit A, pages 3-7).
18. On June 30, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding Respondent's decision. (Exhibit A, pages 1-13).
19. Petitioner's enrollment in and services through the SEDW have been maintained while this matter has been pending. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

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.

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).

Here, as discussed above, Petitioner has been receiving services through Respondent pursuant to the SEDW. With respect to that waiver, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

SECTION 1 – GENERAL INFORMATION

The Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW) Program provides services that are enhancements or additions to Medicaid state plan coverage for children up to age 21 with serious emotional disturbance (SED) who are enrolled in the SEDW. MDHHS operates the SEDW through contracts with the CMHSPs. The SEDW is a fee-for-service program

administered by the CMHSP in partnership with other community agencies. The CMSHP will be held financially responsible for any costs authorized by the CMHSP and incurred on behalf of a SEDW beneficiary.

1.1 KEY PROVISIONS

The SEDW enables Medicaid to fund necessary home and community-based services for children up to age 21 with SED who meet the criteria for admission to a state inpatient psychiatric hospital and who are at risk of hospitalization without waiver services. The CMHSP is responsible for assessment of potential waiver candidates.

Application for the SEDW is made through the CMHSP. The CMHSP is responsible for the coordination of the SEDW services. The Wraparound Facilitator, the child and his family and friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in an IPOS.

A SEDW beneficiary must receive at least one SED waiver service per month in order to retain eligibility.

1.2 ELIGIBILITY

To be eligible for this waiver, the child must meet all of the following criteria.

- Live in a participating county (refer to the Coverage Area subsection in this chapter); OR
- Live in foster care in a non-participating county pursuant to placement by MDHHS or the court of a participating county, with SEDW oversight by a participating county's CMHSP; AND
- Reside with the birth or adoptive family or have a plan to return to the birth or adoptive home; OR
- Reside with a legal guardian; OR
- Reside in a foster home with a permanency plan; OR
- Be age 18 or age 19 and live independently with

supports; AND

- Meet current MDHHS criteria for the state psychiatric hospital for children; AND
- Medicaid eligibility criteria and become a Medicaid beneficiary; AND
- Demonstrate serious functional limitations that impair the ability to function in the community. As appropriate for age, functional limitation will be identified using the Child and Adolescent Functional Assessment Scale (CAFAS®) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS®):
 - CAFAS® score of 90 or greater for children age 7 to 12; OR
 - CAFAS® score of 120 or greater for children age 13 to 18; OR
 - For children age 3 to 7, elevated PECFAS® subscale scores in at least one of these areas: self-harmful behaviors, mood/emotions, thinking/communicating or behavior towards others; AND
- Be under the age of 18 when approved for the waiver. If a child on the SEDW turns 18, continues to meet all non-age-related eligibility criteria, and continues to need waiver services, the child can remain on the waiver up to their 21st birthday.

*MPM, April 1, 2020 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services
SEDW Appendix, pages B1-B2*

Here, pursuant to the above policies, Respondent terminated Petitioner's enrollment in the SEDW. Petitioner then appealed that decision.

In appealing Respondent's decision, 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 the Respondent's decision in light of the information it had at the time it made the decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and Respondent's decision must therefore be affirmed.

The MPM sets clear requirements that must be met on an ongoing basis in order for beneficiaries to remain eligible for the SEDW and, for someone Petitioner's age, those requirements include a CAFAS score of 120 or greater. Here, while Petitioner had such a CAFAS score in the past, he has consistently scored below the required threshold since October of 2019, with his most recent score in April of 2020 being a 70.

Moreover, while Petitioner's representative questions those scores and asserts both that Petitioner's psychiatrist disagrees with them and has completed a CAFAS assessment with a much higher score, the psychiatrist did not testify during the hearing and no conflicting CAFAS score was submitted as evidence.

Similarly, to the extent Petitioner's representative asserts that the record is incomplete because Respondent's exhibit only contains 106 pages and Petitioner's records are much larger, that argument must be rejected. Petitioner's representative could have submitted the remainder of the records as potential exhibits if he wished and, regardless, he fails to point to anything specific in those records that would suggest Respondent erred.

Petitioner's representative also understandably seeks to avoid any disruption in Petitioner's life, especially given the delay in the adoption process and Petitioner's return to school, both of which have caused issues for the minor Petitioner, but the above policies is clear and both Respondent and the undersigned Administrative Law Judge are bound by them.

Accordingly, while Petitioner may still be eligible for services through Respondent, he no longer meets criteria for the SEDW and Respondent properly terminated his enrollment for that waiver.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's enrollment in the SEDW.

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 -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

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]

Counsel for Respondent

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