[redacted]
, MI [redacted]

Date Mailed: August 31, 2020
MOAHR Docket No.: 20-004130
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 4, 2020. [redacted], Petitioner's grandmother/adoptive mother, appeared and testified on behalf of the minor Petitioner. [redacted], Petitioner's Case Manager at Training and Treatment Innovations (TTI), also testified as a witness for Petitioner. 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 entered in the record as Exhibit #1, pages 1-2. Respondent also submitted an evidence packet that were admitted into the record as Exhibits A, pages 1-42.

ISSUE

Did Respondent properly deny Petitioner's request for 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 who has been diagnosed with torticollis; speech sound disorder; developmental coordination disorder; adjustment disorder with mixed disturbance of emotions and conduct; and attention deficit/hyperactivity disorder, combined presentation. (Exhibit A, pages 7, 29).

2. He also presents with mixed disturbance of emotions and conduct; restlessness; behavioral concerns; difficulties with coordination; speech

delays; being fidgety and having difficulties remaining seated; and talking excessively. (Exhibit A, page 29).

3. During a psychological evaluation completed on August 29, 2019, Petitioner scored average in verbal comprehension, visual memory, spatial memory, and working memory; borderline significant for somatic complaints, attention problems, and affective problems; and very low in conceptual, social, practical, and general adaptive composite areas. (Exhibit A, page 14).

4. The recommendations for Petitioner from that psychological evaluation were for home therapy; caregiver counseling/support; family therapy; supports coordination; psychiatry; and mentoring. (Exhibit A, page 14).

5. Petitioner is enrolled in a Medicaid Health Plan (MHP), but no behavioral or mental health services have been requested through his MHP. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

6. Services were requested through Respondent. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

7. On December 11, 2019, Petitioner was assessed for services through Respondent. (Exhibit A, pages 7-37).

8. In that Initial Intake, it was noted that Petitioner has minimal natural supports and the support he does have, *i.e.* his mother, has her own health issues. (Exhibit A, page 14).

9. Petitioner will often "rage" and hit, yell at, or kick other people; he will bite himself; and he does not respect the boundaries of others and will try to hug strangers. (Exhibit A, page 14).

10. He will eat independently without prompts, but he needs physical assistance with getting dressed; prompts and assistance with toileting; and assistance with grooming. (Exhibit A, page 14).

11. Petitioner is able to express basic wants and needs to his mother and he can answer some questions with redirection, but he needs step-by-step instructions and many reminders to complete tasks. (Exhibit A, page 14).

12. He has no safety or stranger danger awareness and he is unaware of the consequences of actions. (Exhibit A, page 17).

13. He needs 24/7 supervision; interventions for his behaviors; and assistance with boundaries. (Exhibit A, page 34).

14. In the Initial Intake, Respondent admitted Petitioner for services. (Exhibit A, page 35).

15. It also noted that Petitioner was requesting respite services, but that the reviewer was recommending that Petitioner receive case management through TTI, speech therapy, occupational therapy, physical therapy, psychiatry services, behavioral services, and respite services. (Exhibit A, page 35).

16. Respondent then approved Petitioner for targeted case management, with TTI as the service provider, on a limited basis while any further necessary assessments were completed and requests or referrals for specific services were made. (Testimony of Respondent's representative).

17. On January 17, 2020, Petitioner, through TTI, requested targeted case management; medication reviews; and treatment planning. (Testimony of Respondent's representative).

18. On January 28, 2020, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that, based upon a review of the Medicaid Provider Manual (MPM) and Petitioner's Initial Intake, Respondent was denying Petitioner's request for services because Petitioner did not meet basic eligibility criteria for services through Respondent. (Exhibit A, pages 1-6).

19. On June 29, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding Respondent's decision. (Exhibit #1, pages 1-2).

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).

Eligibility for services through Respondent is set by Department policy as outlined in the Medicaid Provider Manual (MPM). Specifically, the applicable version of the MPM states in the pertinent part that:

> **1.6 BENEFICIARY ELIGIBILITY**
>
> A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a

Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when his needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record.

The following table has been developed to assist health plans and PIHPs in making coverage determination decisions related to outpatient care for MHP beneficiaries. Generally, as the beneficiary's psychiatric signs, symptoms and degree/extent of functional impairment increase in severity, complexity and/or duration, the more likely it becomes that the beneficiary will require specialized services and supports available through the PIHP/CMHSP. For all coverage determination decisions, it is presumed that the beneficiary has a diagnosable mental illness or emotional disorder as defined in the most recent Diagnostic and Statistical Manual of the Mental Disorders published by the American Psychiatric Association.

In general, MHPs are responsible for outpatient mental health in the following situations:	**In general, PIHPs/CMHSPs are responsible for outpatient mental health in the following situations:**
▪ The beneficiary is experiencing or demonstrating mild or moderate psychiatric symptoms or signs of sufficient intensity to cause subjective distress or mildly disordered behavior, with minor or temporary functional limitations or impairments (self-care/daily living skills, social/interpersonal relations, educational/vocational role performance, etc.) and minimal clinical (self/other harm risk) instability. ▪ The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of	▪ The beneficiary is currently or has recently been (within the last 12 months) seriously mentally ill or seriously emotionally disturbed as indicated by diagnosis, intensity of current signs and symptoms, and substantial impairment in ability to perform daily living activities (or for minors, substantial interference in achievement or maintenance of developmentally appropriate social, behavioral, cognitive,

the former serious disorder have substantially moderated or remitted and prominent functional disabilities or impairments related to the condition have largely subsided (there has been no serious exacerbation of the condition within the last 12 months). The beneficiary currently needs ongoing routine medication management without further specialized services and supports.	communicative or adaptive skills). ▪ The beneficiary does not have a current or recent (within the last 12 months) serious condition but was formerly seriously impaired in the past. Clinically significant residual symptoms and impairments exist and the beneficiary requires specialized services and supports to address residual symptomatology and/or functional impairments, promote recovery and/or prevent relapse.

> The "mental health conditions" listed in the table above are descriptions and are intended only as a general guide for PIHPs and MHPs in coverage determination decisions. These categories do not constitute unconditional boundaries and hence cannot provide an absolute demarcation between health plan and PIHP responsibilities for each individual beneficiary. Cases will occur which will require collaboration and negotiated understanding between the medical directors from the MHP and the PIHP. The critical clinical decision-making processes should be based on the written local agreement, common sense and the best treatment path for the beneficiary.

MPM, July 1, 2019 version
Behavioral Health and Intellectual and Developmental Disability Support and Services
pages 3-4

The State of Michigan's Mental Health Code defines serious mental illness and serious emotional disturbance as follows:

> (2) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the

most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

(a) A substance abuse disorder.
(b) A developmental disorder.
(c) “V” codes in the diagnostic and statistical manual of mental disorders.

(3) “Serious mental illness” means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

(a) A substance abuse disorder.
(b) A developmental disorder.
(c) A “V” code in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d

Additionally, with respect to developmental disabilities, the Mental Health Code also provides in part:

(25) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
(ii) Is manifested before the individual is 22 years old.
(iii) Is likely to continue indefinitely.
(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
  (A) Self-care.
  (B) Receptive and expressive language.
  (C) Learning.
  (D) Mobility.
  (E) Self-direction.
  (F) Capacity for independent living.
  (G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a(25)

Here, Respondent decided to deny Petitioner's request for services pursuant to the above policies and statutes, and on the basis that Petitioner did not present as eligible for ongoing services through Respondent.

In appealing that 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 the decision was made.

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

It is undisputed that Respondent initially found Petitioner to be eligible for services following the Initial Intake due to his diagnoses and impairments. However, given the limited services that were subsequently requested, Respondent subsequently amended its decision in light of that new information and properly found Petitioner to be ineligible for services.

As provided in the above policy, a Medicaid beneficiary with a serious emotional disturbance who is enrolled in a Medicaid Health Plan (MHP) like Petitioner would only

be eligible for specialty mental health services and supports when his needs exceed the MHP benefits, and that does not appear to be the case here. Petitioner only requested targeted case management, medication reviews and treatment planning, and those identified needs can be addressed by services provided via his MHP or other supports. Moreover, while Petitioner is not currently receiving specific services through his MHP, that is only because he has not sought any and there is no clinical documentation suggesting that his needs exceed his MHP benefits.

To the extent Petitioner's representative has new or updated information to provide regarding Petitioner's eligibility for services, then they can always re-request services again in the future. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable polices.

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 services.

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

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