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Date Mailed: October 6, 2020
MOAHR Docket No.: 20-005492
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq*. and 42 CFR 438.400 *et seq*. upon Petitioner's request for a hearing.

After due notice, a hearing was held on October 1, 2020. [redacted], Petitioner's mother and guardian, appeared and testified on Petitioner's behalf.

Katie Snay, Fair Hearing Officer, appeared and testified on behalf of Respondent, Community Mental Health Services of Livingston County. (CMH or Department). Vanessa Anttila, Community Independence Program Supervisor and Diane Heinlein, Program Director, Adult Services, appeared as witnesses for the CMH.

ISSUE

Did the CMH properly deny Petitioner's request for specialized residential 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, born [redacted], receiving services through Community Mental Health Services of Livingston County (CMH). (Exhibit A, p B4; Testimony)

2. CMH is under contract with the Michigan Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area. (Exhibit A; Testimony)

3. Petitioner currently resides in a residential rehabilitation center, Life Challenge Ministries, that is not sponsored or authorized by CMH.

(Exhibit A, pp A1, B17; Testimony).

4. Petitioner has been receiving case management, medication management, and individual therapy through CMH. (Exhibit A, p A1; Testimony)

5. Petitioner's last psychiatric hospitalization was in 2018 which resulted in him eventually receiving specialized residential services at Rose Hill. At that time, Petitioner was presenting with psychotic features, including delusions, not taking his medications, substance use, not sleeping and mania, which resulted in a two-month inpatient stay at U of M, followed by Rose Hill. Petitioner was discharged from Rose Hill in 2019 for not following the rules. (Exhibit A, p B16; Testimony)

6. In July 2020, CMH received a request from Petitioner's mother/guardian for specialized residential services at Rose Hill. (Exhibit A, p B16; Testimony)

7. On July 14, 2020, CMH reviewed and denied the request for specialized residential services, concluding that Petitioner did not meet the medical necessity criteria for specialized residential services and that Petitioner's current needs could be met in a less restrictive setting. It was noted that Petitioner denied any psychotic symptoms and reported taking his current medications, Abilify and Tegretol independently, without prompts. It was further noted that Petitioner was displaying no indication of psychotic features, mania or delusions and there was no indication of any suicidal ideation. Petitioner reported that while he was tired of being at Life Challenges, he was sleeping appropriately, eating properly, and seemed stable. It was noted that historically Petitioner required prompts to complete his ADL's but there were no reports that his physical presentation was off. (Exhibit A, p B16; Testimony)

8. In reviewing the request for specialized residential services, CMH also completed a Level of Care Utilization System for Psychiatric and Addiction Services (LOCUS) Assessment. Petitioner scored an 18 on the LOCUS assessment, resulting in a Level 3, which indicated a need for high intensity community-based services, not specialized residential services. (Exhibit A, pp B4-B15; Testimony)

9. On July 15, 2020, a video conference was held between CMH, Petitioner and his guardian at which time the CMH informed Petitioner and his guardian that the request for specialized residential services was being denied. As part of the discussion, it was suggested by CMH that Petitioner participate in individual therapy by telephone through CMH and those services were accepted and have begun. (Exhibit A, p B17; Testimony)

10. On July 20, 2020, CMH sent Petitioner's guardian a Notice of Adverse Benefit Determination notifying her that the request for specialized residential services was denied. (Exhibit A, pp B1-B3; Testimony)

11. On August 17, 2020, an Internal Appeal was held, and the denial was upheld. Other optional services were discussed with Petitioner and his guardian at the internal appeal, but those services were declined. (Exhibit A, p A1; Testimony)

12. On September 2, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

CONCLUSIONS OF LAW

The Medical Assistance Program 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…

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 Michigan Department of Health and Human Services (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with MDHHS to provide services under the waiver pursuant to its contract obligations with the Department.

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.*

The CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

The applicable sections of the Medicaid Provider Manual (MPM) provide:

> **SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3S)**
>
> PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning.
>
> **17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES**
>
> The goals (listed below) and their operational definitions will vary according to the individual's needs and desires.

However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

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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; and

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and

- 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. (Emphasis added)

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;

- 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.

Medicaid Provider Manual
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
July 1, 2020, pp 111, 24-28, 12-14

CMH's Community Independence Program Supervisor (CIPS) testified that she has worked at CMH since March 2009 and has been a supervisor since 2016. CMH's CIPS indicated that after receiving the request for specialized residential services in this matter a review process was initiated, which included a review of Petitioner's chart, a LOCUS assessment, and discussions with both Petitioner and his guardian. CMH's CIPS testified that it was determined that 24 hours specialized residential services were not medically necessary for Petitioner at this time as his needs could be met in a less

restrictive setting. CMH's CIPS noted that that Petitioner denied any psychotic symptoms and reported taking his current medications, Abilify and Tegretol independently, without prompts. It was further noted that Petitioner was displaying no indication of psychotic features, mania or delusions and there was no indication of any suicidal ideation. Petitioner reported that while he was tired of being at Life Challenges, he was sleeping appropriately, eating properly, and seemed stable. It was noted that historically Petitioner required prompts to complete his ADL's but there were no reports that his physical presentation was off. CMH's CIPS also indicated that in reviewing the request for specialized residential services, CMH also completed a LOCUS Assessment. Petitioner scored an 18 on the LOCUS assessment, resulting in a Level 3, which indicated a need for high intensity community-based services, not specialized residential services. CMH's CIPS indicated that if Petitioner's needs were to change, he could be reassessed but that CMH services cannot be authorized on a "what if" basis.

CMH's Program Director testified that she has worked for CMH since 1992 and has been a supervisor since 1994. CMH's Program Director indicated that she conducted the local appeal held in August 2020 and the denial was upheld. CMH's Program Director indicated that further options were discussed at that time, including an AFC home in Livingston or another county, with CMH supports, or recovery housing, but those services were declined.

Petitioner's mother/guardian testified that it is difficult to not get emotional discussing Petitioner as she has been walking this path with him for the past 10 years. Petitioner's mother/guardian indicated that it was not easy watching Petitioner as a [redacted]-year-old being taken to the hospital looking like he had had a stroke. Petitioner's mother/guardian testified that she has been actively involved in Petitioner's care the whole time and knows him better than anyone. Petitioner's mother/guardian indicated that it is infuriating listening to the CMH witnesses as they see Petitioner as just a number. Petitioner's mother/guardian testified that mental illness is unlike any other disease. Petitioner's mother/guardian discussed an incident that happened when Petitioner visited his father in [redacted] at age 20 and then walked out of the airport in [redacted] on the way home because he could not handle making the connection. Petitioner's mother/guardian indicated that Petitioner ended up in jail and then a psychiatric hospital and it took her five days to get him out. Petitioner's mother/guardian testified that the hospitalization was followed by a 12-hour drive back to Michigan with Petitioner where he was trying to jump out of the car the whole way.

Petitioner's mother/guardian testified that she knows the signs when Petitioner is having difficulties and he is showing those signs now, like wearing all of his clothes when it is 90 degrees outside. Petitioner's mother/guardian indicated that while she is grateful Petitioner is in a safe place now, Life Challenges does not recognize Petitioner's mental health symptoms. Petitioner's mother/guardian also indicated that she does not want Petitioner in Ann Arbor at the recovery center either as he would be likely to walk away from there and end up in a drug house. Petitioner's mother/guardian testified that the only place he can go is Rose Hill, a 400-acre farm, because he cannot simply walk

away from there. Petitioner's mother/guardian testified that she just wants Rose Hill to finish the good work they started. Petitioner's mother/guardian indicated that Rose Hill also wants Petitioner back. Petitioner's mother/guardian testified that she cannot afford Rose Hill on her own and just wants Petitioner to be able to fulfill his dreams of becoming an audiologist. Petitioner's mother/guardian testified that Petitioner has been through so much, she just wants the best for him.

In response, CMH's CIPS reviewed the difference between Petitioner now and in 2018 when he was last hospitalized. CMH's CIPS also indicated that the LOCUS assessment is a standardized, evidenced based tool and can be redone if Petitioner's situation changes.

Petitioner's mother/guardian testified that she was at a loss for words as she just does not think it is possible for CMH to look at every client as an individual. Petitioner's mother/guardian indicated that she knows he is not okay now and that he is going to slip back. Petitioner's mother/guardian testified that Petitioner does not always take his medications and has admitted to her that he sometimes skips doses. Petitioner's mother/guardian indicated that she then sees the rapid speech, which is another sign that Petitioner is slipping. Petitioner's mother/guardian indicated that if Life Challenges had good psychiatric care she would be happy to have Petitioner stay there. Petitioner's mother/guardian noted that when Petitioner could not get in touch with the CMH doctor last week he became very upset. Petitioner's mother/guardian testified that she was just trying to take some preventative measures.

Under the Department's medical necessity criteria section, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Petitioner. As noted above, "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."

Here, Petitioner denied any psychotic symptoms and reported taking his current medications, Abilify and Tegretol independently, without prompts. At the time of the assessment, Petitioner was displaying no indication of psychotic features, mania or delusions and there was no indication of any suicidal ideation. Petitioner reported that while he was tired of being at Life Challenges, he was sleeping appropriately, eating properly, and seemed stable. Petitioner is also completing his ADL's independently and without prompts. Furthermore, on the LOCUS assessment, Petitioner scored an 18, placing him in Level 3, which indicates a need for high intensity community-based services, not specialized residential services. Clearly, Petitioner is in a much better place than when he was last hospitalized in 2018. And while the undersigned can sympathize with Petitioner's mother's concerns for her son, CMH authorizations cannot be based on what might happen in the future. CMH authorizations have to be based on medical necessity at the time the request for services is made. Here, when specialized residential services were requested, Petitioner did not meet the medical necessity criteria for those services. Should Petitioner's condition actually worsen, a new request can be made, and he can be reassessed.

Petitioner bears the burden of proving by a preponderance of the evidence that specialized residential services are a medical necessity in accordance with the Code of Federal Regulations (CFR). Petitioner did not meet the burden to establish that such services are a medical necessity.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Petitioner's request for specialized residential services.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

RM/sb

Robert J. Meade
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

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320 S. Walnut St.
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