[redacted]
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Date Mailed: January 19, 2021
MOAHR Docket No.: 20-007359
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 January 5, 2021. Petitioner appeared and testified on his own behalf. Anthony Holston, Assistant Vice-President of Appeals and Grievances, represented the Respondent Lakeshore Regional Entity. Dr. David Wolff, M.D. and Independent Reviewer, and Amy Prins, Appeals and Grievance Coordinator with Respondent, testified as witnesses for Respondent.

During the hearing, Respondent submitted an evidence packet that were admitted into the record as Exhibits A, pages 1-50. No other exhibits were submitted.

ISSUE

Did Respondent properly deny Petitioner's request for inpatient substance abuse treatment?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Respondent is a Prepaid Inpatient Health Plan (PIHP) associated with Community Mental Health Service Providers (CMHSPs), including Network 180.

2. Petitioner is a [redacted] year-old Medicaid beneficiary who has been diagnosed with alcohol use disorder, cocaine use disorder, cannabis use disorder, tobacco use disorder, and other specified anxiety disorder. (Exhibit A, page 24-25, 33).

3. On October 7, 2020, Petitioner contacted Network 180 seeking inpatient substance abuse treatment. (Exhibit A, pages 24-25).

4. At that time, Petitioner reported struggling with alcohol, cocaine, and methamphetamine use; being homeless and living out of his car; and no active withdrawals. (Exhibit A, page 7).

5. Network 180 assessed Petitioner for treatment that same day. (Exhibit A, pages 28).

6. During the Access Screening, Network 180 noted that Petitioner did not identify any current withdrawals and denied all risk factors for suicidal ideations, homicidal ideations, and psychosis. (Exhibit A, pages 29-30).

7. It also noted that:

> [Petitioner] participated in short term residential with Salvation Army 11/2019 and denies any other treatment outside of attendance at AA meetings on occasion. [Petitioner] identifies drinking "4-5 deuces and maybe a couple of shots," per day. He also states that he is using crack/cocaine every other day, but was not able to identify quantity used, "not that much." Person served states he also smokes 2-3 grams of marijuana per day as well. Client reports relapsing with alcohol same day as his discharge from the short-term program and has been using consistently since this time identifying that his use of crack/cocaine is a more recent habit.
>
> *Exhibit A, page 30*

8. It further found that Petitioner's speech was normal and coherent, and he appeared oriented to person, place, and time. (Exhibit A, page 32).

9. Following the screening, Network 180 concluded:

> [Petitioner] did not meet criteria for residential services as he has only had 1 previous treatment episode and denies participating in any other community based inverventions [sic] or services. He is encouraged to develop more skills and supports before becoming eligible for further residential services. He is also encouraged to work with the IOP provider team if further interventions or services are needed

> and to reach out to access at that time. It was also relayed to the individual that he should reach out with IOP provider if he is interested in detox to ensure that he has connected with a care team prior to entering the facility for aftercare purposes. Given community resource information for the Step Up program and Guiding Light. Encouraged to attend AA/NA meetings as he is able. Told to call Access back if an emergency arises and to seek emergency medical treatment if he does experience withdrawals or other mental health concerns.

Exhibit A, page 34

10. On October 8, 2020, Network 180 sent Petitioner a Notice of Adverse Benefit Determination stating that his request for inpatient substance abuse treatment had been denied on the basis that he did not meet the clinical eligibility for such services. (Exhibit A, pages 15-23).

11. On October 30, 2020, Petitioner again contacted Network 180 seeking inpatient substance abuse treatment. (Exhibit A, pages 35-36).

12. At that time, Petitioner reported:

> that he's been using for about 6 years total. He reports that alcohol is the worst of his addictions, and he doesn't remember the amount he drinks most days. He reported that he's currently living out of his car at the moment, however he is able to transport himself. He has received detox through Network 180 at Turning Point last August and he reported that he wasn't there long enough for it to work. He's gone to Turning Point twice and has done no other treatment programs or recovery programming. He informed this clinician that he is motivated to finally detox and "do it right this time". This clinician offered [Petitioner] an SUD screening appointment over the phone, to which he declined and stated he would prefer to come to the Access Center in person tonight.

Exhibit A, page 35

13. Network 180 then screened Petitioner for services later that day. (Exhibit A, pages 37-38).

14. During the screening, Network 180 noted:

> [Petitioner] presented to Network180 today seeking residential substance use treatment. He reports he was screened on 10/8/20 and was referred to IOP. He states he has not engaged in IOP and will not try IOP because "it won't help." He states he needs to be in a residential program because "talking doesn't do anything." [Petitioner] reports he continues polysubstance use daily. He denies suicidal ideation, homicidal ideation, and psychosis. Consulted with access manager Kenny Garvin, [Petitioner] is directed to his notice of action and informed of the appeal process. Also discussed the expedited appeal process. Printed out a copy of the notice of action and provided this to [Petitioner]. He was encouraged to try IOP in the meantime while waiting for the appeal process. Encouraged [Petitioner] to call or present if safety concerns arise or if symptoms worsen.

Exhibit A, page 38

15. On November 6, 2020, Petitioner filed an appeal with Respondent with respect to its decision to deny Petitioner's request for inpatient substance abuse treatment. (Exhibit A, pages 9-14).

16. In that appeal, Petitioner wrote that he has been dealing with a significant drinking and drug problem, and that he needs a detoxification, inpatient, or a mental health crisis center. (Exhibit A, page 14).

17. On November 9, 2020, Respondent sent Petitioner a Notice of Appeal Denial stating that, after thorough consideration, Petitioner's appeal was denied. (Exhibit A, pages 2-8).

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

> You are a [redacted]-year-old male who requested admission for inpatient substance use treatment on 10/8/20. You were drinking alcohol, using cocaine, and smoking marijuana. You were not at risk for severe acute life-threatening withdrawal. You have no

> history of complicated withdrawal or withdrawal seizures. You had no co-occurring medical or mental health issues that required 24 hour a day medical and nursing monitoring. As of 10/8/20, you did not meet medical necessity criteria for inpatient substance use treatment. Your symptoms could have been safely treated in an intensive outpatient level of care program. The recommended level of care of intensive outpatient treatment would provide for additional interventions or services as needed.
>
> The following criteria was used in your case, ASAM Criteria 3.5WM for inpatient substance use treatment.

Exhibit A, page 2

19. On December 3, 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 45-47).

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-covered substance abuse services and supports are addressed in the Medicaid Provider Manual (MPM) and, with respect to the services relevant in this case, the applicable version of the MPM states in part:

> **SECTION 12 – SUBSTANCE ABUSE SERVICES**
>
> **12.1 COVERED SERVICES - OUTPATIENT CARE**
>
> Medicaid-covered services and supports must be provided, based on medical necessity, to eligible beneficiaries who reside in the specified region and request services.

Outpatient treatment is a non-residential treatment service that can take place in an office-based location with clinicians educated/trained in providing professionally directed alcohol and other drug (AOD) treatment or a community-based location with appropriately educated/trained staff. The treatment occurs in regularly scheduled sessions, usually totaling fewer than nine contact hours per week but, when medically necessary, can total over 20 hours in a week. Individual, family or group treatment services may be provided individually or in combination.

Treatment must be individualized based on a bio-psycho-social assessment, diagnostic impression and beneficiary characteristics, including age, gender, culture, and development. Authorized decisions on length of stay, including continued stay, change in level of care, and discharge, must be based on the American Society of Addiction Medicine (ASAM) Criteria. Beneficiary participation in referral and continuing care planning must occur prior to discharge and should be based on the needs of the beneficiary in order to support sustained recovery.

* * *

12.4 RESIDENTIAL TREATMENT

Residential Treatment is defined as intensive therapeutic service which includes overnight stay and planned therapeutic, rehabilitative or didactic counseling to address cognitive and behavioral impairments for the purpose of enabling the beneficiary to participate and benefit from less intensive treatment. A program director is responsible for the overall management of the clinical program, and treatment is provided by appropriate credentialed professional staff, including substance abuse specialists. Residential treatment must be staffed 24-hours-per-day. The clinical program must be provided under the supervision of a Substance Abuse Treatment Specialist with either full licensure or limited licensure as a psychologist, master's social worker, professional counselor, marriage and family therapist or physician. Services may be provided by a Substance Abuse Treatment Specialist or a non-degreed staff.

This intensive therapeutic service is limited to those beneficiaries who, because of specific cognitive and

behavioral impairments, need a safe and stable environment in order to benefit from treatment.

Authorization requirements:

- The effects of the substance use disorder must be so significant and the resulting impairment so great that outpatient and intensive outpatient treatments have not been effective or cannot be safely provided, and when the beneficiary provides evidence of willingness to participate in treatment.

- Admissions to Residential Treatment must be based on:

  - Medical necessity criteria

  - LOC determination based on an evaluation of the six assessment dimensions of the current ASAM Criteria

- Additional days may be authorized when authorization requirements continue to be met, if there is evidence of progress in achieving treatment plan goals, and reauthorization is necessary to resolve cognitive and behavioral impairments which prevent the beneficiary from benefiting from less intensive treatment.

12.5 EXCLUDED SERVICES

- Room and board;

- All other services not addressed within Covered or Allowable Services; and

- Medicaid Substance Abuse Services funded Outside the PIHP Plan.

Some Medicaid-covered services are available to substance abuse beneficiaries but are provided outside of the PIHP Plan. The PIHPs are not responsible to pay for the following:

- Acute detoxification;

- Laboratory services related to substance abuse (with the exception of lab services required for Methadone);

- Medications used in the treatment/management of addictive disorders;
- Emergency medical care;
- Emergency transportation;
- Substance abuse prevention and treatment that occurs routinely in the context of providing primary health care; and
- Routine transportation to substance abuse treatment services which is the responsibility of the local MDHHS office.

MPM, October 1, 2020 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter
Pages 81, 91-92

While substance abuse services may be covered services, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services. *See* 42 CFR 440.230. 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, October 1, 2020 version*
> *Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter*
> *Pages 14-15*

Here, Respondent decided to deny Petitioner's request for inpatient substance abuse treatment pursuant to the above policies and statutes, and on the basis that the requested services were not medically necessary.

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 Petitioner has substance abuse disorders and that some sort of services were medically necessary or appropriate, but that alone does not demonstrate medical necessity for the specific inpatient treatment sought by Petitioner and the remaining record fails to establish such a need. As credibly testified to by Dr. Wolff, the requested inpatient treatment is not medically necessary, and intensive outpatient treatment is a more appropriate, efficacious, less restrictive and cost-effective service that otherwise meets Petitioner's need, given Petitioner's medical history and the absence of any other significant medical or mental health issues; his symptoms at the time; his mild risk of withdrawal; the lack of any need for around-the-clock monitoring, his level of motivation; and his past history of substance abuse treatment, including a relapse after previous inpatient services. Moreover, while Petitioner testified that the recommended outpatient services will not work and he wants inpatient treatment, that preference for inpatient services does not demonstrate medical necessity, especially where Petitioner has declined the recommended treatment, and Respondent's Appeals and Grievance Coordinator fully

described the recommended treatment and how it can meet Petitioner's needs, with Dr. Wolff also noting that the recommended outpatient treatment could lead to a future referral for inpatient treatment if necessary and appropriate.

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 inpatient substance abuse treatment.

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-Location Contact

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