

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: March 22, 2021
MOAHR Docket No.: 20-007447
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION and ORDER GRANTING SUMMARY DISPOSITION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

With due notice, a telephone hearing was scheduled for January 14, 2021. However, that hearing was subsequently adjourned twice at Petitioner's request while the parties attempted to resolve the case, with Petitioner's representative indicating that Respondent stipulated to the adjournment both times and Respondent not filing any objections. In the Second Order of Adjournment, the hearing was rescheduled, with due notice, for February 25, 2021.

On February 16, 2021, Petitioner filed a Motion for Summary Disposition pursuant to Michigan Administrative Code Rule 792.10129(1)(b). In that motion, Petitioner argued that, while Petitioner is authorized for 112 hours per week of personal care services Respondent improperly decided to deny payment for any services provided by Petitioner's sole caregiver beyond 40 hours per week. Through its brief and exhibits, Petitioner also argued that Respondent relied solely on its own internal policies in denying payment and failed to base its decision on any existing law or state policy.

Respondent did not file any response to Petitioner's Motion for Summary Disposition.

On February 25, 2021, a telephone hearing was held as scheduled. No representative appeared for Respondent and the undersigned Administrative Law Judge determined that the hearing would proceed without Respondent pursuant to MCL 24.272(1). Attorney Daniel Wojciak appeared on Petitioner's behalf, with Petitioner and her daughter also present.

During the hearing, Petitioner limited herself to the legal argument raised in the Motion for Summary Disposition and declined to present any other testimony or evidence. In particular, Petitioner's representative reiterated that the facts of this case are clear and

that they demonstrate that Respondent improperly denied payments based on its own internal policies and without any basis in applicable Medicaid law or policy.

In response to the undersigned Administrative Law Judge raising the issue of jurisdiction *sua sponte*, Petitioner's representative noted that, as provided in the exhibits, Respondent expressly notified Petitioner of her right to request a State fair hearing in the notices of denial sent to Petitioner. Petitioner's representative also requested an opportunity to brief any jurisdictional issue and the undersigned Administrative Law Judge granted that request, with the record left open until March 16, 2021.

On March 16, 2021, Petitioner timely filed a Brief in Support of MOAHR Jurisdiction. In that brief, Petitioner asserted that, as acknowledged by Respondent in its notices, MOAHR had jurisdiction over the denial of payment at issue in this case.¹

The Administrative Procedures Act (APA) allows parties "an opportunity to present oral and written arguments on issues of law and policy". MCL 24.272(3). Pursuant to MCL 24.272(3), a party may pursue a motion for summary disposition to address questions of law that do not involve factual disputes. See *Smith v Lansing Sch Dist*, 428 Mich 248, 256-257; 406 NW2d 825 (1987).

MCR 2.116(3) serves as a guide for summary disposition motions under MCL 24.272(3). See, e.g., *American Community Mutual Ins Co v Commr of Ins*, 195 Mich App 351, 361-363; 491 NW2d 597 (1992). Pursuant to MCR 2.116(c)(10), summary disposition is appropriate when there is no genuine dispute of material fact among parties to an action.

Furthermore, the Michigan Administrative Code allows for summary disposition under Rule 792.10129, which provides, in pertinent part:

- (1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that any of the following exists:
 - (a) There is no genuine issue of material fact.
 - (b) There is a failure to state a claim for which relief may be granted.

¹ Upon review, the undersigned Administrative Law Judge finds that, as Respondent appears to have conceded by sending notice of Petitioner's right to request a State fair hearing, Respondent did take an adverse benefit determination that would give rise to the right to a hearing in this case. See 42 CFR 438.400(b)(3).

- (c) There is a lack of jurisdiction or standing.
- (2) If the administrative law judge has final decision authority, he or she may determine the motion for summary decision without first issuing a proposal for decision.
- (3) If the motion for summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

As such, this Administrative Law Judge has the authority to hear and decide preliminary dispositive motions and the authority to issue a decision for summary disposition.

Here, as discussed above, Petitioner argues that summary disposition should be granted in Petitioner's favor. In particular, Petitioner argues that there are no material facts in dispute and the record demonstrates that Respondent determined that payment for 72 hours per week of authorized services would be denied unless they were provided by someone other than Petitioner's sole caregiver. Petitioner also argues that Respondent only cited its internal policy in support of its action, rather than the applicable ICO contract, Medicaid Provider Manual, Minimum Operating Standards, Medicaid State Plan or Health Link Waiver; and that Respondent cannot implement a more restrictive policy than what is provided for in those applicable laws and policies.

Moreover, as also discussed above, Respondent never filed a response to Petitioner's Motion for Summary Disposition and failed to appear at the hearing to argue against it.

Upon review, the undersigned Administrative Law Judge now finds that Petitioner's Motion for Summary Disposition must be granted, and that Respondent's decision must be reversed.

Petitioner is authorized for personal care services through the Respondent ICO pursuant to the MI Health Link Program. With respect to that program, the applicable version of the Medicaid Provider Manual (MPM) states in part:

SECTION 1 – GENERAL INFORMATION

Effective March 1, 2015, the Michigan Department of Health and Human Services (MDHHS), in partnership with the Centers for Medicare & Medicaid Services (CMS), implemented a new managed care program called MI Health Link. This program integrates into a single coordinated delivery system all physical health care, pharmacy, long term supports and services, and behavioral health care for individuals who are dually eligible for full Medicare and full Medicaid. The goals of the program are to improve

coordination of supports and services offered through Medicare and Medicaid, enhance quality of life, improve quality of care, and align financial incentives. MDHHS and CMS have signed a three-way contract with managed care entities called Integrated Care Organizations (ICOs) to provide Medicare and Medicaid covered acute and primary health care, pharmacy, dental, and long term supports and services (nursing facility and home and community-based services). The MI Health Link program also includes a home and community-based services (HCBS) waiver for MI Health Link enrollees who meet nursing facility level of care, choose to live in the community rather than an institution, and have a need for at least one of the waiver services as described in this chapter. This waiver is called the MI Health Link HCBS Waiver.

The Michigan Prepaid Inpatient Health Plans (PIHPs) in the four demonstration regions are responsible for providing all Medicare and Medicaid behavioral health services for individuals who have mental illness, intellectual/developmental disabilities, and/or substance use disorders. The Eligibility and Service Areas section provides a list of the regions and related counties.

*MPM, October 1, 2020 version
MI Health Link Chapter, page 1*

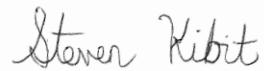
In addition to the MPM, as well as the three-way contract and waiver referenced in the MPM, the Michigan Department of Health and Human Services has also issued Minimum Operating Standards for MI Health Link Program and MI Health Link HCBS Waiver. See Minimum Operating Standards for MI Health Link Program and MI Health Link HCBS Waiver, Version 8, Effective Date 7/22/2019.

However, despite those clear governing authorities applicable to the MI Health Link Program and personal care services through it, Respondent instead relied solely on its own guidelines or policies in the notices of its decision. Moreover, given the limited record before the undersigned Administrative Law Judge and Respondent's seeming abandonment of any argument or defense, there is nothing in the record supporting Respondent's authority to issue such internal guidelines or demonstrating how they comport with the applicable policies set by the State of Michigan or CMS in this case.

Petitioner has therefore demonstrated that she is entitled to judgment as a matter of law and, consequently, Petitioner's Motion for Summary Disposition must be granted and Respondent's decision in this case reversed.

IT IS THEREFORE ORDERED that:

- Petitioner's Motion for Summary Disposition is **GRANTED**.
- Respondent's decision is **REVERSED**, and it must initiate a reinstatement of Petitioner's services and payment for past services Petitioner and her provider are otherwise entitled to.



Steven Kibit
Administrative Law Judge

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

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI
48919
MDHHS-MCPD@michigan.gov

Community Health Rep

AmeriHealth Caritas
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Petitioner

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