



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

Date Mailed: March 22, 2021  
MOAHR Docket No.: 21-000477  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

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

After due notice, a hearing was held on March 18, 2021. [REDACTED], Petitioner's Mother, appeared on behalf of Petitioner. [REDACTED], Petitioner's Father, and [REDACTED], Psychologist, appeared as witnesses for Petitioner. Stacey Coleman-Ax, Chief Privacy Officer and Fair Hearings Officer, appeared at the hearing on behalf of Respondent, Macomb County Community Mental Health (MCCMH or Department).

**Exhibits:**

- |            |                          |
|------------|--------------------------|
| Petitioner | 1. Miscellaneous Records |
| Department | A. Hearing Summary       |

**ISSUE**

Did the Department properly deny Petitioner's request for Overnight Health and Safety Supports (OHSS)?

**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 Medicaid beneficiary born [REDACTED] 1991 who receives supports and services from Department through the Habilitation Supports Waiver. (Exhibit A; Testimony.)
2. On December 23, 2020, Petitioner requested OHSS in the amount of 6 hours per day. (Exhibit A; Testimony.)

3. As of December 23, 2020, Petitioner was already approved for and receiving 21.3 hours per day of paid supports.<sup>1</sup> (Exhibit A; Testimony.)
4. On December 28, 2020, Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated Petitioner's request for 6 hours per day of OHSS had been denied. The notice specifically stated as the reason for the denial:

The amount requested in combination with already approved paid supports exceeds 24 hours per day of services. (Exhibit A.)

5. On December 30, 2020, Department received from Petitioner, a request for an internal appeal. (Exhibit A.)
6. On January 28, 2021, Department issued a Notice of Appeal Denial. The notice indicated Petitioner's request for 6 hours per day of OHSS had been denied. In addition to the initial reasoning for denial, the Notice of Appeal Denial also provided "...there is no information to support the medical necessity for this service as submitted for authorization." (Exhibit A.)
7. On February 11, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.
8. On March 18, 2021, a Medicaid Fair Hearing was commenced to address Petitioner's appeal.
9. During the March 18, 2021, Medicaid Fair Hearing, the Department agreed to reprocess Petitioner's request for 6 hours of OHSS. (Testimony.)

### **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

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<sup>1</sup> Respite 5 hours per day; Community Living Supports 14 hours per day; Adult Home Help 2.3 hours per day.

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.<sup>2</sup>

*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.<sup>3</sup>

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...<sup>4</sup>

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)

Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HW service per month in order to retain eligibility. Medical necessity criteria should be used in determining the amount,

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<sup>2</sup> 42 CFR 430.0

<sup>3</sup> 42 CFR 430.10

<sup>4</sup> 42 USC 1396(b)

duration, and scope of services and supports to be used. The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.<sup>5</sup>

## **2.11 OVERNIGHT HEALTH AND SAFETY SUPPORT (OHSS) SERVICES [SUBSECTION ADDED 8/1/20]**

**Note:** OHSS is not available for individuals residing in licensed non-community facilities or settings. Payment of OHSS may not be made directly or indirectly to responsible relatives (i.e., spouses or parents of minor children) or a legal guardian. **(text added per bulletin MSA 20-04)**

### **2.11.A ELIGIBILITY [SUBSECTION ADDED 7/1/20]**

To be eligible for OHSS, an individual must:

- Be Medicaid eligible;
- Be enrolled in one of the following waiver programs: CWP, HSW, or SEDW;
- Be living in a community-based setting (not in a hospital, Intermediate Care Facility for Individuals with Intellectual Disabilities [ICF/IID], nursing facility, licensed Adult Foster Care home, correctional facility, or child caring institution); and
- Require supervision overnight to ensure and maintain the health and safety of an individual living independently.

The need for OHSS must be reviewed and established through the person-centered planning process with the beneficiary's specific needs identified that outline health and safety concerns and a history of behavior or action that has placed the beneficiary at risk of obtaining or maintaining their independent living arrangement. Each provider of OHSS services will ensure the provision of, or provide as its minimum responsibility, overnight supervision activities appropriate to the beneficiary's needs to achieve or maintain independent living, health, welfare, and safety. **(text added per bulletin MSA 20-04)<sup>6</sup>**

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<sup>5</sup> Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, October 1, 2020, p 107.

<sup>6</sup> Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, Children's Serious Emotional Disturbance Home and Community-Based Services Waiver Appendix, October 1, 2020, p B11.

The Department denied Petitioner's request for 6 hours per day of OHSS because if approved, Petitioner would have over 24 hours a day of paid supports. The Department however, acknowledged that there was no determination that Petitioner may be eligible for less than 6 hours and agreed to reprocess Petitioner's request for OHSS services.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred in denying Petitioner's request for services.

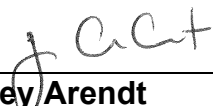
The Department is ordered to reprocess Petitioner's request for OHSS through the person-centered planning process paying particular attention to Section 2.11.A of the Behavioral Health and Intellectual and Developmental Disability Supports and Services Children's Serious Emotional Disturbance Home and Community-Based Services Waiver Appendix.

**IT IS THEREFORE ORDERED** that:

The Department's decision is REVERSED.

Within 10 days of receipt of this Order, Department should take steps to reprocess Petitioner's request consistent with this decision.

CA/dh

  
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**Corey Arendt**  
Administrative Law Judge  
for Elizabeth Hertel, 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

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED] MI [REDACTED]

**DHHS-Location Contact**

David Pankotai  
Macomb County CMHSP  
22550 Hall Road  
Clinton Township, MI 48036

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]