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Date Mailed: December 2, 2021
MOAHR Docket No.: 21-004026
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, 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 November 23, 2021. Eryka Symington, Attorney, appeared on behalf of Petitioner.

Barbara Laughbaum, Utilization Manager, appeared on behalf of Respondent, Pathways (Department). Jonas Beversluis, Clinical Program Director, Danae Lorenz, Nurse Practitioner, and Dr. Daniel Cote, Medical Director, appeared as witnesses for Department.

Exhibits:

Petitioner

1. Appointment of Guardian
2. January 19, 2017, Psychological Evaluation
3. Order Appointing Guardian
4. July 5, 2021, Licensing Report
5. July 14, 2021, Licensing Report
6. July 21, 2021, Licensing Report
7. July 22, 2021, Licensing Report
8. July 23, 2021, Licensing Report
9. Access Standards Section IV Paragraph A(3)
10. Section 330.1100a(26) of the Mental Health Code

11. CMH Notice of Denial
12. Section 330.1100d(3) of the Mental Health Code
13. Definitions
14. September 3, 2019, Psychiatric Evaluation
15. June 10, 2021, Psychiatric Evaluation
16. July 9, 2021, Department Assessment
17. September 2, 2021, Medication Review Note
18. November 26, 2012, Preadmission Screening Review

Department A – Hearing Packet

ISSUE

Did the Department properly determine that Petitioner was not eligible for CMH services as a person with a Developmental Disability or Severe Mental Illness?

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] 1968, who is diagnosed with mild intellectual disability, alcohol dependence, unspecified mood disorder. (Exhibit A; Exhibit 2; Testimony.)

2. Since 2011, Petitioner has received mental health benefits through Northpointe Behavioral Healthcare. (Testimony.)

3. On January 19, 2017, Petitioner participated in a psychological evaluation. Wendy Sue G. Miljour-Hill, MS LLP, conducted the evaluation and diagnosed Petitioner with mild intellectual disabilities, alcohol dependence with alcohol-induced persisting dementia and unspecified mood disorder. (Exhibit 2.)

4. On February 10, 2017, Tim Zarling from Northpointe Behavioral Healthcare, filed a Petitioner for Appointment of Guardian, Individual with Alleged Developmental Disability. (Exhibit 1; Testimony.)

5. On March 16, 2017, Petitioner was found to be a person with a developmental disability in need of a plenary guardian. (Exhibit 3.)

6. On September 3, 2019, Petitioner participated in a psychiatric evaluation

conducted by Diane E. Roell of Northpointe. The evaluation reflected a diagnosis of major neurocognitive disorder due to multiple etiologies with behavioral disturbance. (Exhibit A; Exhibit 14.)

7. In September 2020, Petitioner was transferred from Northpointe to Department due to the location of Petitioner's group home. As part of the transfer, the Department had to reassess Petitioner to determine eligibility for services. (Exhibit A; Testimony.)

8. Since September of 2020, Petitioner's explosive behavior has increased. (Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8.)

9. On June 10, 2021, Petitioner participated in a psychiatric evaluation conducted by Danae E. Lorenz. Ms. Lorenz can only perform psychiatric evaluations under the supervision of a supervising practitioner. The completed evaluation does not contain a signature of a supervising practitioner and indicates the case would be discussed with Dr. Cote and other supervisors but that the administrating clinician did not believe Petitioner was eligible for services due to a primary diagnosis of major neurocognitive disorder. (Exhibit A; Testimony.)

10. On August 10, 2021, the Department issued Petitioner, a Notice of Denial. The notice indicated Petitioner's request for targeted case management, medical services, CLS and personal care were denied as it was determined Petitioner did not meet the criteria for specialty services as a person with a severe mental illness. (Exhibit 11.)

11. On September 1, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

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.[1]
>
> 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.[2]

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…[3]

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 (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services 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.[4]

The Department 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.

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[1] 42 CFR 430.0.
[2] 42 CFR 430.10.
[3] 42 CFR 1396n(b)
[4] *See 42 CFR 440.230.*

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

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; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and

- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and

- Made within federal and state standards for timeliness; and

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

- 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; 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.

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.[5]

The Medicaid Provider Manual also lays out the responsibilities of Medicaid Health Plans (MHP's) and CMH's:

> 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

[5] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, July 1, 2021, pp 14-16.

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 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, communicative or adaptive skills).
▪ The beneficiary was formerly significantly or seriously mentally ill at some point in the past. Signs and symptoms of 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.	▪ 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.

[6]

The Michigan Mental Health Code definition of developmental disability provides, in pertinent part:

> (26) “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.

[6] *Id* at 2, 3.

(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.[7]

The Michigan Mental Health Code definition of serious mental illness provides, in pertinent part:

(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 use disorder.

[7] MCL 330.1100a(26).

(b) A developmental disorder.

(c) "V" codes in the Diagnostic and Statistical Manual of Mental Disorders[8]

The Department witnesses testified that following the June 10, 2021, psychological assessment, and review of the available medical documentation, it was determined Petitioner was not eligible for services due to Petitioner not having a Serious Mental Illness.

The Petitioner argued she qualified as a person with a Serious Mental Illness based on a diagnosis of major neurocognitive disorder due to multiple etiologies with behavioral disturbances and that Respondent has not ruled out the possibility Petitioner may also qualify as a person with a Serious Mental Illness based on other mental health diagnosis.[9] Petitioner also contends Respondent did not rule out Petitioner qualifying as a person with a Developmental Disability. Petitioner went on to highlight that the assessment relied upon by Respondent does not appear to have been conducted or reviewed by a clinician with the appropriate credentials to make such assessments.

Respondent contends that in order for Petitioner to qualify as a person with a developmental disability the developmental disability must have existed or been manifested prior to the age of 22. Respondent also pointed out that the June 10, 2021, assessment was reviewed by Dr. Cote.

The evidence in this case clearly indicates that prior to August of 2021, Petitioner was determined to be eligible for CMH services as either having a developmental disability or having a serious mental illness. The evidence goes on to show that following the June 10, 2021, assessment, the Respondent concluded Petitioner was no longer eligible for CMH services.

In these types of cases, it is the Petitioner that has the burden of proof of showing they are entitled to the benefits in question and that the Department erred in applying the applicable laws and policies in determining Petitioner's eligibility for services. That being the case however, based upon the evidence presented, I find the Petitioner to have met that burden.

The arguments provided by the Department were troubling to the extent neither Dr. Cote, nor Ms. Lorenz had a clear recollection of Petitioner, Petitioner's June 10, 2021, assessment, or of Petitioner's prior medical records that were reviewed. Additionally, although both Ms. Lorenz and Dr. Cote agreed the June 10, 2021, assessment was reviewed/discussed, the document lacks Dr. Cote's signature attesting to the review. Furthermore, although the Department argued the Petitioner was not eligible for services due to not meeting the developmentally disabled criteria, there is no evidence to indicate this criterion was thoroughly reviewed. Although the Department contends

[8] MCL 330.1100d (3).
[9] Intermittent Explosive Disorder, Major Depressive Disorder, and Personality Change Due to Another Medical Condition.

the disability has to be manifested prior to the age of 22, there is no evidence to indicate this specific criterion was reviewed and vetted.

Based on these findings, I find sufficient evidence to show the Department did not properly determine Petitioner did not meet the eligibility criteria for CMH services. Accordingly, the Department's denial of Petitioner's request for CMH services must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly determined that Petitioner was not eligible for CMH services as a person with either a Serious Mental Illness OR a Developmental Disability.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

The Department is further ORDERED to reassess the Petitioner for CMH services and conduct a psychiatric assessment to be conducted by a licensed psychiatrist or psychologist.

CA/dh

Corey Arendt
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	Belinda Hawks 320 S. Walnut St. 5th Floor Lansing, MI 48913
Petitioner	[redacted] MI [redacted]
Counsel for Petitioner	Kenneth Pneokie 806 Ludington Street Escanaba, MI 49829
DHHS Department Rep.	Michael St. John Pathways 200 West Spring St. Marquette, MI 49855