



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 22, 2022
MOAHR Docket No.: 22-000407
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 March 3, 2022. Jennifer Schneller, Licensed Social Worker, appeared on Petitioner's behalf, with [REDACTED] Petitioner's father/legal guardian, and [REDACTED] Petitioner's mother, testifying as witnesses for Petitioner. Katherine Forbes, Fair Hearing Officer, appeared and testified on behalf of the Respondent Region 10 PIHP, with Dr. Tom Seilheimer, Respondent's Chief Clinical Officer, and Britt Wagner, Utilization Manager at Genesee Health System, also testifying as witnesses for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit A. Respondent also submitted eight documents that were admitted into the record as Exhibits #1-#8.

ISSUE

Did Respondent properly deny Petitioner's request for skill building 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 with a legal guardian and who has been diagnosed with severe intellectual developmental disorder. (Exhibit A, pages 1, 3; Exhibit #2, pages 1-4).
2. For over 20 years, Petitioner had also been approved for skill-building services through Respondent. (Testimony of Petitioner's guardian).
3. Most recently, Petitioner's skill-building services were approved through October 12, 2021. (Testimony of Respondent's representative).

4. However, in March of 2020, Petitioner's skill-building services stopped after the program he attended closed due to the COVID-19 pandemic. (Testimony of Petitioner's mother).
5. In January of 2021, Petitioner's guardian reached out to Respondent in an effort to get Petitioner's skill-building services restarted. (Testimony of Petitioner's guardian).
6. On July 13, 2021, Respondent sent Petitioner's guardian a Notice of Adverse Benefit Determination stating that the request for skill-building services was being denied. (Exhibit A, page 7; Exhibit #6, pages 1-4).
7. With respect to the reason for the adverse benefit determination, the notice stated:

The clinical documentation provided does not establish medical necessity.

Based on review of current information, Skill Building services have been denied due to lack of medical necessity. Please discuss with your Case Manager/Supports Coordinator other appropriate services such as Community Living Supports or Community resources.

Exhibit #6, page 1

8. On September 8, 2021, Petitioner's guardian filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 4-6).
9. On October 4, 2021, Respondent sent Petitioner's guardian a Notice of Appeal Denial stating that the decision to deny Petitioner's request for skill building services was being upheld. (Exhibit A, page 4; Exhibit #7, pages 1-3).
10. With respect to the reason for that decision, the notice stated: "[Petitioner] does not meet the medical necessity for this service." (Exhibit #7, page 1).
11. On January 31, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding Respondent's decision. (Exhibit A, pages 1-7).

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).

Here, as discussed above, Petitioner had been receiving skill-building services through Respondent. With respect to such services, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

17.3.J. SKILL-BUILDING ASSISTANCE

NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years.

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support. Skill-building assistance may be provided in the beneficiary's residence or in community settings.

Documentation must be maintained by the PIHP that the beneficiary is not currently eligible for supported employment services provided by Michigan Rehabilitation Services (MRS) or the Bureau of Services for Blind Persons (BSBP). Information must be updated when the beneficiary's MRS or BSBP eligibility conditions change.

*MPM, July 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Page 150*

While skill-building services are 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.

*Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 14-16*

Here, as discussed above, Respondent decided to deny Petitioner's request for skill-building services pursuant to the above policies.

In support of the action, Respondent's Chief Clinical Officer testified regarding the eligibility requirements and purpose of both skill-building services and Community Living Supports (CLS), as well as why he believed Petitioner is more appropriate for CLS than skill-building. In particular, he noted that Petitioner's goals are more related to socialization and leisure, as opposed to training for school, work or volunteering. The Chief Clinical Officer also testified that his belief was based solely on the Skill Building Support Assessment provided to him.

The Utilization Manager at Genesee Health System testified regarding that Skill Building Support Assessment and how it was completed by staff at the skill-building program Petitioner previously attended. She also testified that, based on that assessment and the guardian reporting during it that they are only asking for socialization and leisure assistance, and that Petitioner is not able to learn skills, the decision to deny services was made. She further testified that, given those statements, the rest of the assessment form was not completed.

Respondent's representative testified that Petitioner was authorized for skill-building services through October 12, 2021, and that the Case Manager repeatedly tried to contact Petitioner's guardian starting in January 2021 but was unable to do so. She also testified that the Case Manager initiated the assessment for skill-building services completed in July 2021 but could not explain why the Case Manager would do so after being unable to reach Petitioner's guardian. Respondent's representative further testified that, after the authorization ended, efforts have been made to reach Petitioner and that she is available to help Petitioner reconnect.

In disputing the action, Petitioner's legal guardian testified that Petitioner started receiving services 26 years ago and has been receiving skill-building services for 22 years. He also testified that Petitioner would attend the skill-building program 5 days per week; he received assistance with both skills and socialization there; and that nothing has changed that should lead to Petitioner no longer receiving the services. He further testified that, after the skill-building services stopped temporarily because of the COVID-19 pandemic, he reached out to Petitioner's Case Manager via telephone in January 2021 to restart the skill-building services, but that they have not been able to set a meeting or assessment. Petitioner's guardian also denied taking part in any assessment on July 8, 2021 or stating that Petitioner is unable to learn skills.

Petitioner's mother testified that Petitioner was last assessed in 2019, with that assessment only being partially completed, and that Petitioner was assigned a new Case Manager in January 2020. She also testified that Petitioner's skill-building

services stopped in March 2020 due to the pandemic and that they reached out to the new Case Manager in January 2021 to resume services, but that communicating with her was difficult; they were only able to speak with the Case Manager a few times; and no assessment was ever completed. She further testified that they got the adverse benefit determination but were never given a reason why services did not restart, and that the last communication with the Case Manager was in October 2021.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his request for skill-building services. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information Respondent had at the time it made the decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner met his burden of proof, and that Respondent's decision must therefore be reversed.

As a preliminary matter, given Respondent's representative's express testimony that Petitioner's skill-building services were approved through October 12, 2021, the notice of denial sent on July 13, 2021, was clearly defective. If Petitioner was already approved for skill-building services, regardless of whether he was currently utilizing them, then Respondent cannot deny a request for them. Moreover, while Respondent could decide to terminate an approved service, that is not what it did in this case and the notice of denial was improper.

Additionally, even putting aside the improper notice, the decision to deny skill-building services was also improper given the record in this case. Respondent's decision was based solely on statements Petitioner's guardian allegedly made during a purported assessment completed by the skill-building program Petitioner attended, but Petitioner's guardian credibly denied that such an assessment was completed or that he made the alleged statements, and his testimony is uncontradicted by anyone with personal knowledge. Moreover, the other evidence that Respondent presented only supports Petitioner's guardian's testimony that no such assessment occurred. Respondent asserted both that skill-building was already approved, and that the Case Manager had been unable to reach Petitioner's guardian for months, with neither situation explaining why the Case Manager, who did not testify at the hearing, would initiate a new assessment.

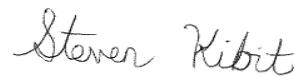
Accordingly, while it is not clear if Petitioner continues to meet the criteria for skill-building services, it is clear that Respondent erred in "denying" his previously approved services in this case and its decision to do so must therefore be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly denied Petitioner's request for skill-building services.

IT IS THEREFORE ORDERED that

The Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner for skill-building services.



SK/tem

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

Belinda Hawks
320 S. Walnut St.
5th Floor
Lansing, MI 48913
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