[redacted]
[redacted] MI [redacted]

Date Mailed: April 19, 2022
MOAHR Docket No.: 22-000792
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 31, 2022. [redacted] Public Guardian, appeared and testified on Petitioner's behalf. Katharine Squire, Fair Hearing Officer, appeared and testified on behalf of Respondent Community Mental Health for Central Michigan (CMHCM).

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1, pages 1-6.[1]

ISSUE

Did Respondent properly decide to terminate Petitioner's Targeted Case Management (TCM) 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. In January of 2021, Petitioner was residing in the community and receiving services through the MI Choice Waiver program. (Testimony of Petitioner's representative).

2. On February 1, 2021, Petitioner moved into a nursing facility. (Testimony of Petitioner's representative).

3. In March of 2021, Respondent completed an OBRA Level II Evaluation and Determination in which it concluded that Petitioner's needs could be

[1] Respondent submitted an evidence packet as a proposed exhibit, but Petitioner's guardian had not yet received it and the hearing proceeded without it. Moreover, based on the testimony presented, the undersigned Administrative Law Judge determined that the hearing need not be continued, or the record left open in order to include Respondent's proposed exhibit.

met in a nursing facility. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

4. No OBRA Evaluation has been completed since March of 2021. (Testimony of Petitioner's representative).

5. Petitioner subsequently determined that she wanted to move out of the nursing facility, and she applied for services through Respondent to assist with that transition. (Testimony of Petitioner's representative).

6. In November of 2021, Respondent approved Petitioner for TCM services. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

7. On December 1, 2021, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that her TCM services would be terminated as of December 12, 2021, because she was currently residing in an institution in which Respondent cannot authorize the services. (Testimony of Respondent's representative).

8. On February 2, 2022, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit #1, page 3).

9. On February 11, 2022, Respondent sent Petitioner written notice that Petitioner's Internal Appeal had been denied. (Exhibit #1, pages 3-5).

10. With respect to the reason for the denial, the notice stated:

> An independent review completed by a team member who was not part of your original decision upheld the determination of closure to case management services. While reviewing the chart it was noted that you are currently residing at [redacted] nursing home facility. [Petitioner] and/or her guardian may wish to contact Mi Choice Waiver for Case Management services.

Exhibit #1, page 3

11. On February 24, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner's guardian in this matter with respect to the decision to terminate Petitioner's TCM services. (Exhibit #1, pages 1-6).

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 has been receiving Targeted Case Management (TCM) services through Respondent. With respect to such services, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

> **SECTION 13 – TARGETED CASE MANAGEMENT**
>
> Targeted case management is a covered service that assists beneficiaries to design and implement strategies for obtaining services and supports that are goal-oriented and individualized. Services include assessment, planning, linkage, advocacy, coordination and monitoring to assist beneficiaries in gaining access to needed health and dental services, financial assistance, housing, employment, education, social services, and other services and natural supports developed through the person-centered planning process. For children and youth, a family driven, youth guided planning process should be utilized. Targeted case management is provided in a responsive, coordinated, effective and efficient manner focusing on process and outcomes.
>
> Targeted case management services must be available for all children with serious emotional disturbance, adults with serious mental illness, persons with a developmental disability, and those with co-occurring substance use disorders who have multiple service needs, have a high level of vulnerability, require access to a continuum of mental health services from the PIHP, and/or are unable to independently access and sustain involvement with needed services.

Beneficiaries must be provided choice of available, qualified case management staff upon initial assignment and on an ongoing basis.

MPM, October 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Page 94

However, regarding the location of services through Respondent, the MPM also provides in part:

2.3 LOCATION OF SERVICE [CHANGES MADE 4/1/21]

Services may be provided at or through PIHP service sites or contractual provider locations. Unless otherwise noted in this manual, PIHPs are encouraged to provide mental health and developmental disabilities services in integrated locations in the community, including the beneficiary's home, according to individual need and clinical appropriateness. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's residence.

Substance abuse covered services must generally be provided at state licensed sites. Licensed providers may provide some activities, including outreach, in community (off-site) settings. Mental health case management may be provided off-site, as necessary, to meet individual needs when case management is purchased as a component of a licensed service. For office or site-based services, the location of primary service providers must be within 60 minutes/60 miles in rural areas, and 30 minutes/30 miles in urban areas, from the beneficiary's home.

For beneficiaries residing in nursing facilities, only the following clinic services may be provided:

- *Nursing facility mental health monitoring;*
- *Psychiatric evaluation;*
- *Psychological testing, and other assessments;*
- *Treatment planning;*

- *Individual therapy, including behavioral services;*
- *Crisis intervention; and*
- *Services provided at enrolled day program sites.*

Refer to the Nursing Facility Chapter of this manual for PASARR information as well as mental health services provided by Nursing Facilities.

MPM, October 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 10-11
(internal highlighting omitted)
(italics added for emphasis)

Here, as discussed above, Respondent decided to terminate Petitioner's Targeted Case Management (TCM) services pursuant to the above policies.

In support of the action, Respondent's representative testified that the services cannot be approved because Petitioner resides in a nursing facility and, under the above policies, TCM services cannot be approved for residents residing in such facilities. Respondent's representative could not explain why TCM services were initially approved given that Petitioner was residing in a nursing facility at that time as well, but she also testified that a mistake had been made.

In response, Petitioner's guardian/representative testified that it has been an ongoing issue determining who should assist Petitioner in transitioning out of the nursing facility, which Petitioner wants to do. She also testified that Petitioner was denied services through the MI Choice Waiver program and directed to apply for services through Respondent as Petitioner does have mental illness. Petitioner's representative further testified that Petitioner was opened for services through Respondent and that an Individual Plan of Service was developed.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in terminating her TCM services. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information it 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 has failed to meet her burden of proof and that Respondent's decision must therefore be affirmed.

Petitioner was recently approved for TCM services, but that alone is not enough to demonstrate for the services and, as credibly and fully explained by Respondent's

representative, such services cannot be approved for Petitioner as she resides in a nursing facility; the MPM expressly limits what services can be provided to beneficiaries residing in such facilities; and TCM services are not among the listed services.

The parties did discuss other avenues for services during the hearing, including services through the MI Choice Waiver program or another OBRA Level II Evaluation and Determination through Respondent, and Petitioner is free to pursue those avenues.[2]

Nevertheless, whatever relief or services may be available to Petitioner elsewhere, Respondent's action in this case must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's targeted case management services.

IT IS THEREFORE ORDERED that

The Respondent's decision is **AFFIRMED**.

Steven Kibit

Steven Kibit
Administrative Law Judge

SK:tem

[2] Petitioner's representative testified that Petitioner has already been denied services through the MI Choice Waiver program, but that decision is not before the undersigned Administrative Law Judge at this time and Petitioner has the right to appeal any such denial. As provided in the MPM, nursing facility residents who desire to transition to the community and will otherwise meet the requirements for MI Choice qualify for priority status. *See* MPM, April 1, 2022 version, MI Choice Waiver chapter, page 9.

NOTICE OF APPEAL: Petitioner 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 Street
5th Floor
Lansing, MI 48913
HawksB@michigan.gov

Authorized Hearing Rep.

[redacted]
[redacted] MI [redacted]

Petitioner

[redacted]
[redacted] MI [redacted]

DHHS Department Rep.

Katherine Squire
Community Mental Health of Central Michigan
301 South Crapo, Suite 100
Mount Pleasant, MI 48858
Ksquire@cmhcm.org

DHHS-Location Contact

Katherine Squire - 56
Community Mental Health of Central Michigan
218 Fast Ice Drive
Midland, MI 48642
Ksquire@cmhcm.org