

[REDACTED]

Date Mailed: June 14, 2024
MOAHR Docket No.: 23-009673
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

The above-captioned matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and upon a request for a hearing filed on behalf of the minor Petitioner Austin Kitei (Petitioner).

On January 30, 2024, a telephone prehearing conference was held for the purpose of presenting and discussing preliminary matters. [REDACTED] Petitioner's father, appeared on Petitioner's behalf at the conference and all times thereafter Andrew Brege, attorney, appeared on behalf of the Respondent Oakland Community Health Network (Respondent) at the conference and all times thereafter.

During the conference, the parties and ALJ confirmed the issue on appeal; set a deadline for the submission of proposed exhibits; and scheduled a hearing for February 27, 2024. In response to questions from Petitioner's representative, the ALJ also stated that he would not be taking judicial notice of any evidence from earlier proceedings between the parties, but that the parties could submit any such evidence as proposed exhibits in this case. He further determined that, with the parties' agreement, Petitioner would present his case first at the hearing and that the parties would have the opportunity to file written closing briefs after the hearing was concluded in this case.

On February 20, 2024, the ALJ adjourned the hearing scheduled for February 27, 2024, at Petitioner's request due to the unavailability of an important witness for Petitioner. The hearing was rescheduled for March 20, 2024.

On March 20, 2024, the telephone hearing began as scheduled. However, the hearing was not completed during the scheduled time, and the ALJ determined that the matter would be continued.

On April 24, 2024, the telephone hearing was continued and completed as scheduled.

During the hearing, both parties submitted proposed exhibits marked sequentially with page numbers, and the ALJ will refer to those page numbers for ease of reference when

discussing them. Specifically, Petitioner submitted nine exhibits that were admitted into the record as Exhibits #1-#9, pages 1-57 and 63-65¹, while Respondent submitted eleven exhibits that were admitted into the record as Exhibits A-K, pages 1-168.

The following witnesses also testified during the hearing:

Samantha Hizelberger, Social Worker, Harbor Oaks Hospital

[REDACTED] Petitioner's Mother

Deborah Miller, IDT Program Manager, Easterseals MORC

Adam Hamilton, Clinical Director, Respondent

After the hearing, the record was left open until May 17, 2024, for the parties to submit written closing briefs and response briefs.

Both parties timely filed closing and response briefs, and the record closed as scheduled on May 17, 2024.

ISSUE

Did Respondent properly deny Petitioner's request for residential placement?

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 male who has been diagnosed with autism spectrum disorder; attention deficit hyperactivity disorder; obsessive-compulsive disorder; disruptive mood dysregulation disorder; and gastroesophageal reflux disease. (Exhibit K, page 162).
2. His parents are divorced, but share joint legal custody, and he lives with his mother, who is the sole adult caregiver in their home. (Exhibit C, page 31; Exhibit K, page 164).
3. Petitioner has both Medicaid and private insurance. (Testimony of Petitioner's Mother).

¹Respondent objected to pages 58-63 of Petitioner's exhibits on the basis of relevancy; the ALJ sustained the objection; and those pages were not admitted. Respondent also objected to pages 35-41, but that objection was overruled, with the ALJ finding that Respondent's objection went more to weight than relevancy.

4. Petitioner received applied behavior analysis (ABA) services through his private insurance when he was very young, but the services stopped when he began attending kindergarten full-time. (Testimony of Petitioner's Mother).
5. He also received some ABA services through his private insurance in 2020 during the COVID-19 pandemic, but they were stopped by Petitioner's mother after he eloped during an ABA session. (Exhibit F, page 145).
6. In October of 2021, when Petitioner was nine years old, the local police were dispatched to his home due to his behaviors, which included physical aggression or assault toward his mother, property destruction, or self-injurious behaviors. (Exhibit #5, page 45).
7. Similar incidences and police interventions occurred on December 1, 2021; January 19, 2022; February 1, 2022; February 6, 2022; March 19, 2022; March 22, 2022; and April 20, 2022. (Exhibit #5, pages 35-45).
8. For the incident on April 20, 2022, Petitioner's mother reported to the police that she believed Petitioner's outburst was caused by Petitioner working with two new therapists in the home, with Petitioner having been out of the home for weeks prior and not use to being home or the therapists. (Exhibit #5, pages 47-50).
9. Petitioner was also suspended from the Birmingham YMCA Day Camp in June of 2022 because he was provoking or fighting with others and making inappropriate physical contact. (Exhibit #8, page 64).
10. In June of 2022, Petitioner was approved for the Children's Waiver Program (CWP) and services through Respondent, a Prepaid Inpatient Health Plan (PIHP), and Easterseals MORC, one of Respondent's associated provider agencies. (Exhibit #6, page 11; Testimony of IDT Program Director).
11. Petitioner also briefly received ABA services in the spring and summer of 2022 through his private insurance, but his mother decided to discontinue those services because they felt they were triggering explosive episodes and making the home unsafe for Petitioner afterward. (Exhibit F, page 112; Testimony of Petitioner's Mother).
12. Those ABA services in 2022 were the last time Petitioner has received such services. (Testimony of Social Worker; Testimony of Petitioner's Mother).
13. On June 6, 2022, after Petitioner was approved for the CWP, Petitioner's parents requested that Petitioner be placed at the Great Lakes Center for Autism Treatment and Research for treatment. (Exhibit #6, page 10).

14. On June 13, 2022, Easterseals MORC denied Petitioner's request on the basis that residential placement was not medically necessary. (Exhibit #6, pages 10-11).

15. Specifically, the denial stated in part:

[Petitioner] has no evidence of imminent dangerousness to self or others. There is no current suicidal ideation, homicidal ideation, or psychotic thinking. [Petitioner] could care for his basic needs. There is no recent self-injurious behavior or physical aggression. There are no current symptoms or behaviors that require 24-hour-a-day, 7-day-a-week medical and nursing care. There is no evidence that he cannot receive support and access to therapeutic services outside a state facility. The care as requested is in excess of [Petitioner's] needs. There are alternative interventions which would be equally or more effective.

Other interventions that might be tried for this youth include a children's waiver program focusing on case management, CLS, Respite, counseling, and psychotherapy, along with continuation of Applied Behavioral Analysis services in special education school and medication management.

Exhibit #6, pages 11-12

16. On August 31, 2022, Petitioner filed a Local Appeal with Respondent regarding the denial of the request for residential placement. (Exhibit #6, page 12).

17. On September 27, 2022, Respondent denied Petitioner's Local Appeal and upheld the decision to deny the request for residential placement. (Exhibit #6, pages 12-13).

18. On September 28, 2022, local police were dispatched to Petitioner's home because Petitioner was uncontrollable, screaming, and being violent (Exhibit #5, page 51).

19. Petitioner subsequently went to a residential facility in South Carolina through his private insurance, staying there until January of 2023. (Testimony of Social Worker).

20. On January 23, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing regarding the denial of Petitioner's request for residential placement. (Exhibit #6, page 14).

21. MOAHR then docketed Petitioner's case as Docket No. 23-000366. (Exhibit #6, pages 10-22).
22. On February 22, 2023, ALJ Corey Arendt conducted an administrative hearing in Docket No. 23-000366. (Exhibit #6, page 10).
23. On March 2, 2023, ALJ Arendt issued a decision in Docket No. 23-000366, in which he affirmed the denial of Petitioner's request for residential placement. (Exhibit #6, pages 10-22).
24. In that decision, ALJ Arendt wrote in part:

The goal of the Child Waiver Program and Medicaid in general is to provide the medically necessary services in the most cost-effective and least restrictive setting. There is no question that residential placement would be in the most restrictive setting, and that in-home CLS and Respite would be much less-restrictive and more cost-effective if they can be provided in a manner that treats, ameliorates, diminishes, or stabilizes Petitioner's health and behavioral issues.

In this case, it is clear that Petitioner's request for services and subsequent denial all occurred prior to any treatment being accepted and/or provided by Petitioner. And while, Petitioner definitely presents with some serious health and behavioral issues, there is nothing in the record that indicates Petitioner wouldn't benefit from CLS and Respite services and furthermore and more importantly, nothing that indicates these services would not be beneficial and successful in treating Petitioner's health and behavioral issues.

Consequently, and based on the evidence presented, I find sufficient evidence to affirm the Department's decision to deny Petitioner's request for placement. Petitioner can always submit a new request for services at any time.

Exhibit #6, page 19

25. On March 20, 2023, Petitioner was assessed in person at the Great Lakes Center for Autism Treatment and Research. (Exhibit #2, page 2).
26. Following that assessment, on March 24, 2023, Petitioner's parents again requested that Petitioner be placed at the Great Lakes Center for Autism Treatment and Research for treatment. (Exhibit #7, page 24).

27. That same day, Easterseals MORC denied the request, stating in part that:

It is the decision of Easterseals MORC that there is a lack of justification to support the need for admission to the Great Lakes Autism Treatment and Research Center at this time as we have not been able [sic] to implement less-restrictive strategies and interventions. It is our opinion, that an admission to Great Lakes Autism Treatment and Research Center would be a more restrictive environment in which we do not feel [sic] is the most appropriate due to the lack of evidence that all recommendations and strategies have not been tried in his current living environment.

Exhibit #7, page 24

28. On May 23, 2023, Petitioner filed a Local Appeal regarding the denial of the second request for residential placement. (Exhibit #7, page 24).

29. On June 13, 2023, Respondent denied that Local Appeal. (Exhibit #7, page 25).

30. On June 26, 2023, Petitioner was admitted into the specialized inpatient pediatric unit at Harbor Oaks Hospital. (Exhibit F, page 107; Exhibit K, pages 160-164).

31. Petitioner was brought in after reportedly attacking two camp counselors. (Exhibit K, page 164).

32. At that time, Petitioner's mother reported that Petitioner had been doing well, but that his behavior had taken a sudden turn over the past four weeks. (Exhibit K, page 164).

33. While Petitioner was hospitalized, Easterseals MORC extended his Individual Plan of Service (IPOS). (Exhibit D, pages 46-47; Exhibit G, pages 120-121).

34. At that time, Petitioner was approved for, and receiving, targeted case management and respite care services. (Exhibit D, pages 63-64).

35. Easterseals MORC further met with Petitioner's mother to discuss approval of 2:1 support and a harness during transportation and how those supports would be implemented, while also noting that it had been a struggle to find staff and that the approval was only made with the understanding that the harness would be faded out. (Exhibit H, pages 123-136).

36. While hospitalized in July of 2023, Petitioner was also seen, with the visit arranged through his mother and his private insurance, by Caliber Autism & Pediatric Therapy ("Caliber"). (Exhibit F, pages 112, 117-118; Exhibit #9, page 65).

37. However, as stated in its subsequent email, Caliber declined to do an assessment or provide services for Petitioner because it felt it could not provide the right services. (Exhibit F, pages 112, 117-118; Exhibit #9, page 65).
38. Petitioner's mother reported Caliber's decision to Easterseals MORC, while also asking about direct care staff; reporting that it was a challenge to find ABA or direct staff; and asking about wait lists for group homes. (Exhibit F, pages 117-118).
39. She also reported that she was not interested in any ABA services for Petitioner in their home as past services had triggered explosive episodes. (Exhibit F, page 112).
40. Petitioner's mother further reported that Petitioner had an ABA assessment scheduled for August 9, 2023, with LifeLab, but that she cancelled it on the recommendation of hospital staff, who did not think the assessment would be successful given Petitioner's status at the time. (Exhibit F, pages 73, 96, 101).
41. The assessment with LifeLab was never rescheduled by Petitioner's mother. (Testimony of Petitioner's Mother).
42. On August 9, 2023, Petitioner's case manager at Easterseals MORC sent Petitioner's parents an Autism Intensive Care Flyer. (Exhibit F, page 100).
43. However, Petitioner's mother did not want any support from the case manager in finding ABA services for Petitioner. (Exhibit F, page 96; Testimony of Petitioner's Mother).
44. On August 12, 2023 Petitioner was discharged from Harbor Oaks Hospital. (Exhibit K, page 161).
45. As part of his discharge, it was recommended that he receive ABA services. (Testimony of Social Worker).
46. On August 19, 2023, August 21, 2023, and August 26, 2023, the local police were dispatched to Petitioner's home due to his behaviors, including assaulting his mother and injuring himself. (Exhibit #5, pages 52-57).
47. On August 23, 2023, MOAHR received a request for hearing filed by Petitioner with respect to the denial of his second request for residential placement. (Exhibit #7, page 26).
48. MOAHR then docketed Petitioner's case as Docket No. 23-004903. (Exhibit #7, pages 23-26).

49. Around that same time, Petitioner's parents made a third request for residential placement, reporting an increase in aggression and property destruction since his release from the hospital. (Exhibit F, page 90).
50. On August 23, 2024, Easterseals MORC staff reviewed the new request and determined that they would recommend that it be denied. (Exhibit F, page 90).
51. On August 28, 2023, Petitioner's mother emailed Easterseals MORC with information for a meeting scheduled for the next day, including statements regarding Petitioner's increased volatility and emotional dysregulation after returning home; his self-injurious behavior; and the multiple calls to 911 and trips to the emergency room. (Exhibit I, pages 143-147).
52. Petitioner's mother also reported in part that the car is a very triggering environment for Petitioner; large numbers of ABA providers had declined to even do an initial assessment because of his extreme behaviors; it is not feasible that he will tolerate behavior medication at home or in a car; past attempts at ABA in the home had failed; Great Lakes had assessed Petitioner in the home and found that residential placement is integral for Petitioner; and that Easterseals MORC is improperly blaming her for a lack of services. (Exhibit F, pages 143-147).
53. At the meeting on August 31, 2023, the parties disputed whether Petitioner's mother had consented to Easterseals MORC coordinating with Petitioner's school or private insurance, with Easterseals MORC also indicating the decision on Petitioner's third request for residential placement would be made by Respondent. (Exhibit F, page 80).
54. On September 1, 2023, Respondent indicated via email that it was currently reviewing Petitioner's case for medical necessity, and that it would reach out if any further information was needed. (Exhibit #3, page 3).
55. No further information was requested from Petitioner. (Testimony of Petitioner's Mother; Testimony of Clinical Director).
56. On September 11, 2023, Petitioner's mother reported, via email the Petitioner's continuing difficult behaviors in the car if going anywhere but school or his overnight respite. (Exhibit E, pages 69-70, 86).
57. A September 13, 2023 Progress Note from Easterseals MORC, completed following a meeting at Petitioner's school, indicated that Petitioner was doing well at school with 1:1 support, with only two bad days at the very start of the semester; he was riding the bus well with supports and staff taking precautions to avoid triggers; and that Petitioner attends school 35 hours each week during a typical school year. (Exhibit C, pages 29-44).

58. The Progress Note also provided that the goal remained keeping him in the home with his family as long as he can do so in a safe manner; Petitioner continued to have significant behavioral concerns that pose a health and safety risk to himself and others, with daily and constant support needed; his parents are divorced and lives with his mom full-time, with his behaviors in the car preventing overnight visits with his father on Saturdays and Sundays; and his mother is the only adult caregiver in their home. (Exhibit C, pages 29-44).
59. Petitioner was approved at that time for targeted case management; respite care services, used at a respite home; behavioral supports; and CLS. (Exhibit C, pages 29-44; Testimony of IDT Program Manager).
60. Other than residential placement, no other specific services had been requested or denied. (Testimony of Petitioner's Mother).
61. On September 14, 2023, Respondent sent Petitioner an Adverse Benefit Determination Notice stating that his pending third request for a residential placement had been denied on the basis that residential placement was not medically necessary. (Exhibit B, pages 23-27).
62. The notice also stated in part:

The request for Residential Setting admission is being denied. According to the MDHHS Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services chapter this service is not medically necessary. This decision was made utilizing Diana Antonacci, MD review of the information provided. The practitioner has the opportunity to discuss this decision rendered with an appropriate behavioral healthcare reviewer. If you would like to discuss further, please contact Customer Services at 1-800-341-2003.

Per Diana Antonacci, MD, based on the information provided, Michigan Child Waiver Program and Michigan Medicaid Provider Manual guidelines are not met for admission to Residential level of care as requested. The patient was recently stabilized at the inpatient level of care. He has no suicidal or homicidal ideation or psychosis. There has been no recent aggression or self-injurious behavior. The patient has long-standing behavioral concerns; however, he has not exhausted less-restrictive strategies, interventions, and services. The patient's current symptoms and behaviors do not require 24-hour-a-day, 7-day-a-week supervision and observation or frequent medical and nursing care. There is no indication that the patient cannot receive

and access to therapeutic services outside a highly restrictive residential environment.

Per Diana Antonacci, MD, the patient and his family could benefit from the supports and services as described and authorized in the current plan of service. This patient could benefit from continuation of Targeted Case Management, psychological support services and ABA services, as well as continuing special education support.

Exhibit B, page 24

63. On September 15, 2023, Petitioner's mother requested that certain staff no longer be involved in her son's care, with her request subsequently granted. (Exhibit I, page 153; Testimony of IDT Program Manager).
64. On September 26, 2023, the Great Lakes Center for Autism Treatment and Research approved Petitioner for services at its intensive residential treatment program. (Exhibit #2, page 2).
65. On October 3, 2023, ALJ Arendt conducted a hearing in Docket No. 23-000366 regarding Petitioner's second request for residential placement. (Exhibit #7, pages 23-34).
66. On November 6, 2023, ALJ Arendt issued a decision in Docket No. 23-000366, in which he affirmed the denial of Petitioner's second request for residential placement. (Exhibit #7, pages 23-34).
67. In part, his decision stated:

[Respondent] contended that placing the beneficiary in an inpatient setting was not the best course of action due to Petitioner not fully exploring less-restrictive options such as CLS and Respite. Furthermore, the available documentation and testimony unmistakably establish that relocation of the beneficiary would be the most stringent option, even more restrictive than the home and community-based services being offered by the [Respondent].

It's evident that Petitioner would derive substantial benefits from the comprehensive utilization of all the authorized services, including ABA services covered by their private insurer. However, the records do indicate that the full range of services offered to Petitioner is not being fully utilized. Nevertheless, the evidence suggest that this underutilization is primarily due to barriers created by the Petitioner's family.

If not for these barriers, the Petitioner would be receiving a sufficient level of services to adequately address their medical needs.

Additionally, considering inpatient services at this juncture would be premature. It is evident from the evidence presented, that the full spectrum of services offered by the [Respondent] has not yet been fully tapped into. Given the potential benefits of these services, it is in the best interest of the beneficiary to exhaust all available options before resorting to the most restrictive measure of inpatient care. Only by fully utilizing the array of services already in place can we ascertain whether they can effectively meet the beneficiary's medical needs.

For these reasons, the decision by the [Respondent] to deny residential placement should be affirmed.

Exhibit #7, pages 31-32

68. On November 21, 2023, Petitioner filed a Local Appeal with Respondent with respect to the denial of his most recent, third request for residential placement. (Exhibit A, page 2).
69. On December 2, 2023, Petitioner's mother emailed Easterseals MORC about planning for the summer, including a request for help in trying to locate a local center for ABA, with homebound services not an option. (Exhibit F, pages 74-75).
70. On December 21, 2023, Respondent sent Petitioner written notice that the Local Appeal with respect to the third denial of residential placement had been denied. (Exhibit A, pages 2-21).
71. In part, that decision stated:

The Local Appeal Clinical Reviewer that conducted the Benefit Denial Clinical Review based on the criteria MDHHS Behavioral Health and Intellectual and Developmental Disability Supports and Services, Medical Necessity Criteria, 2.5.A, indicated the following that supports the Local Appeal being **upheld**:

- The OCHN Administration initiated a Clinical Review for the request for Residential (location Great Lakes Autism Center-GLAC) on 9-14-23 to look at the current needs of the beneficiary. The denial decision on 9-14-23 by OCHN for the service ICF/IDD-Residential Placement **was**

clinically appropriate given the Beneficiary's condition at the time the denial was made.

- There **was not** medical necessity for an ICF/IDD placement based on the Beneficiary's condition at the time the denial was made based on my review of the decision by the previous PREST Reviewer.
- The Beneficiary **can** successfully be maintained in the community with the current or proposed outpatient authorized MORC services and supports.
- Per the record, [Petitioner's] prognosis for change is good at this time and he would benefit from Children's Waiver Supports to work on the following rehabilitative goals: improving his communication skills, participating in and building his personal care skills, participating in and building his daily living skills, and improving positive coping skills to help him address when he is upset, frustrated, or angry, which can lead to tantrum/explosive behavioral episodes. [Petitioner's mother] reported [Petitioner's] behavior is not consistent across settings. [Petitioner] often displays behavior in multiple settings, the type, intensity, duration and frequency is specific to the setting he is in and the people he is with (and it changes from setting to setting).

Exhibit A, page 17

72. On December 29, 2023, MOAHR received the request for hearing filed in this matter with respect to the denial of Petitioner's third request for residential placement.

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, the minor Petitioner has been receiving services through Respondent in his family home in the community while his parents have now requested, for the third time, a residential placement for him.

With respect to the location and medical necessity of services through Respondent, the applicable version of the Medicaid Provider Manual (MPM) states in part:

2.3 LOCATION OF SERVICE

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.

* * *

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.

*MPM, July 1, 2023 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 10, 13-15*

Here, Respondent denied Petitioner's request for a residential placement pursuant to the above policies and on the basis that it was not medically necessary for Petitioner given the availability of less-restrictive services in the community that can meet Petitioner's need.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence, that Respondent erred in denying his request. Moreover, the undersigned ALJ is limited to reviewing 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 ALJ finds that Petitioner has failed to meet his burden of proof and that Respondent's decision must therefore be affirmed.

It is undisputed in this case that Petitioner has significant diagnoses, including autism spectrum disorder, and extensive care needs, including a need for around-the-clock supervision.

However, even if the requested residential placement would meet his medical needs, that alone is insufficient to meet Petitioner's burden in this case as, per policy, Respondent may deny services 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.

Moreover, it is also undisputed that a residential placement would be more restrictive than Petitioner receiving services while residing in the community.

Petitioner first argues that the evidence demonstrates that Respondent's denial was improper, with the Adverse Benefit Determination Notice sent on September 14, 2023, replete with misstatements and inaccuracies, in addition to failing to comply with the MPM.

However, even assuming *arguendo* that Petitioner's characterization of Respondent's findings in the Adverse Benefit Determination Notice are correct, that determination was not Respondent's final decision in this matter as Petitioner filed a Local Appeal with Respondent that was considered and denied.

Moreover, the notice sent on December 21, 2023 regarding Respondent's denial of Petitioner's Local Appeal extensively described the dispute in this case and Respondent's reasoning, consistent with its findings in earlier decisions, that residential placement had to be denied as it was not medically necessary given the existence of other appropriate and less-restrictive services, including ABA services in the community that otherwise satisfies the standards for medically necessary services

In disputing those findings, Petitioner's representative argues that no such less-restrictive services exist given that Petitioner and his family have attempted services less-restrictive than a requested residential placement, and those services have all failed. Specifically, he notes that Petitioner received ABA services in 2020 and 2022, which were unsuccessful; that there are more recent denials from ABA providers such as Caliber; and that Petitioner continues to have hospitalizations and challenging behaviors despite Respondent having nearly two years to identify and implement a plan to help Petitioner achieve his goals.

However, Petitioner's argument that Respondent has failed to meet Petitioner's needs in the community despite having years to do so is unpersuasive. The record is clear that Respondent has consistently had a plan for Petitioner that, as recommended by every medical provider in the record, included ABA services and that those services have not been requested or received, with Petitioner's parents never requesting Respondent's assistance in securing such services prior to the decision in this case or that Respondent coordinate with Petitioner's private insurance.

Moreover, while Petitioner did briefly receive ABA services in 2020 and 2022 through his private insurance, they were terminated at the request of his mother and the record does not contain sufficient information as to the amount, scope, or duration of those services to demonstrate a failure of ABA services then, or to find that now they would fail years later.

Similarly, the record does not reflect that ABA services are currently unavailable in the community. Petitioner's mother previously reported to Easterseals MORC that large numbers of ABA providers had declined to even do an initial assessment of Petitioner because of his extreme behaviors, but her testimony and the exhibits only reflect one provider that declined to complete an assessment, *i.e.*, Caliber, and Caliber's letter did not state that it did not assess Petitioner due to his behaviors. Petitioner's mother also cancelled an assessment by the only other ABA provider identified as one she contacted, *i.e.*, LifeLab, and she expressly declined assistance from Respondent in locating ABA services. Petitioner does have private insurance and can pursue ABA services through it first, but Petitioner's mother declining coordination or assistance from Respondent, in addition to failing to support her testimony with specific providers unsuccessfully approached or other evidence, makes her testimony regarding the lack of available ABA services in the community suspect.

Petitioner also argues that, even if the less-restrictive services in the community identified by Respondent have not been tried, Respondent still erred as the record reflects that those services cannot safely be provided and are therefore unavailable, as the MPM does not require that unsafe services be provided before more restrictive services can be approved.

In support of that argument, Petitioner's representative points to Petitioner's negative and violent reactions following previous attempts; the testimony of Hizelberger, a Social Worker at the hospital where Petitioner has frequently been hospitalized, regarding the recommendation of Petitioner's team of providers, and a letter from Dr. Sanjeev Venkatararaman, M.D., a Child and Adolescent Psychiatrist who has treated Petitioner explaining why the recommended ABA services must be provided in a residential inpatient setting.

However, as discussed above, even if Petitioner has had negative and violent reactions to previous ABA services while residing in the community as testified to by his mother, the record does not show that those less-restrictive services have been sufficiently tried to determine whether they cannot be safely provided. It is undisputed that, even in the best-case scenario, Petitioner receiving ABA services while residing in the community could be a challenge initially and that there may be a difficult transition period, but that does not mean they are completely unsafe long-term or with additional services in place short-term.

Moreover, while the social worker did testify that it is the opinion of the team of medical professionals at Harbor Oaks Hospital, who have treated Petitioner for years, that in-home services cannot be safely provided for Petitioner; that testimony is unsupported by the record, with no credible documentation from Harbor Oaks Hospital regarding such findings or recommendations. At most, Petitioner provided a letter purportedly from Dr. Venkataraman explaining why the recommended ABA services must be provided in a residential inpatient setting, but that letter also had limited probative value. The letter is not signed by Dr. Venkataraman, and he did not testify at the hearing. The letter is also undated, with a reference to the "most recent stay" in the hospital as one in August of 2022 suggesting that it is out-of-date and possibly obsolete given later developments. Finally, even ignoring those issues with the letter, the ALJ finds it conclusory with respect to the need for inpatient residential services and ultimately unpersuasive.

Petitioner has therefore failed to show that less-restrictive services are unavailable, inappropriate or insufficient to meet Petitioner's medical needs, and the undersigned ALJ consequently finds that Respondent's denial of Petitioner's request for residential placement should be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for a residential placement.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sj



Steven Kibit
Administrative Law Judge

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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 14th day of June 2024.

S. James

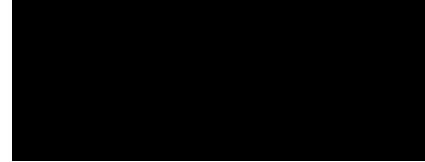
S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic & First Class Mail:

Petitioner



Authorized Hearing Representative



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