

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN
DIRECTOR

Date Mailed: April 19, 2024
MOAHR Docket No.: 24-002195
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 a request for a hearing filed on behalf of Petitioner [REDACTED] (Petitioner).

After due notice, a telephone hearing was held on April 2, 2024. [REDACTED] Petitioner's mother, appeared and testified on the minor Petitioner's behalf. George Motakis, Fair Hearing Officer, represented Respondent Lakeshore Regional Entity (Respondent). Bethany Sebree, Waiver Coordinator at HealthWest, testified as a witness for Respondent.

During the hearing, the following exhibits were admitted into the record without objection:

- Exhibit A: HealthWest Appeal Packet and Notice of Adverse Benefit Determination
- Exhibit B: CAFAS Report dated January 9, 2024
- Exhibit C: Local Appeal Request
- Exhibit D: Notice of Appeal Receipt
- Exhibit E: Notice of Appeal Denial
- Exhibit F: Appeal Summary Report
- Exhibit G: Request for Appeal

ISSUE

Did Respondent properly terminate Petitioner's enrollment in the Serious Emotional Disturbances Waiver (SEDW) Program?

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 fourteen (14) year-old Medicaid beneficiary who has been diagnosed with schizoaffective disorder-bipolar type; fetal alcohol spectrum disorder (FASD); attention deficit hyperactivity disorder (ADHD); reactive attachment disorder (RAD); and anxiety. (Exhibit A, page 2; Testimony of Respondent's representative).
2. She has a history of inpatient hospitalizations due to homicidal ideations and aggression; aggressive behaviors, including behaviors toward her parents and siblings; mood dysregulation and instability; psychosis; impulsive behaviors; anxiety and irritability; issues controlling her anger, including altercations with caregivers and other students at her school; and hoarding food. (Exhibit A, pages 12-13, 15; Testimony of Petitioner's representative).
3. Due to her diagnoses and need for assistance, Petitioner has been approved for services through Respondent, a Prepaid Inpatient Health Plan (PIHP), and HealthWest, a Community Mental Health Service Provider (CMHSP) associated with Respondent. (Exhibit A, pages 2-19; Testimony of Respondent's representative).
4. In February of 2023, Petitioner was approved for the SEDW, with enhanced services through that program still provided through Respondent and HealthWest. (Testimony of Waiver Coordinator).
5. Around the time of that approval, HealthWest completed a Child and Adolescent Functional Assessment Scale (CAFAS) assessment with respect to Petitioner and determined that she had a score of 120. (Exhibit B, page 5; Testimony of Waiver Coordinator).
6. Petitioner's services through the SEDW included community-based wraparound services; respite care services; and community living supports. (Exhibit A, page 20; Testimony of Waiver Coordinator).
7. Petitioner's behavior has improved since enrolling in the SEDW and receiving those services. (Exhibit A, pages 3-16; Testimony of Petitioner's representative).
8. As part of the planning for Petitioner's Individual Plan of Service (IPOS), Petitioner requested reauthorization of services through the SEDW in 2024. (Exhibit A, pages 17-19).

9. On January 9, 2024, a Lisa Travis with HealthWest completed a new CAFAS assessment with respect to Petitioner. (Exhibit B, pages 1-5).
10. In that assessment, Petitioner was scored as a 110. (Exhibit B, page 1).
11. On January 12, 2024, HealthWest sent Petitioner's representative a written Notice of Adverse Benefit Determination stating that Petitioner's request for reauthorization of the SEDW had been denied because it did not meet Medicaid rules and the SEDW would stop on January 31, 2024. (Exhibit A, pages 20-26).
12. On January 25, 2024, Petitioner's representative requested an Internal Appeal with Respondent regarding the decision to terminate SEDW services. (Exhibit C, page 1; Exhibit D, pages 1-5).
13. On February 2, 2024, Respondent sent written notice that the Internal Appeal had been denied. (Exhibit E, pages 1-6).
14. With respect to the reason for the decision, that notice stated:

You would like your child to stay on the waiver.
You do not meet Serious Emotional Disturbance (SED) waiver criteria as your symptoms have improved with treatment. You will receive all the same services moving forward it will just not be under the waiver.

Exhibit E, page 1

15. On March 6, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (Exhibit G, pages 1-8).

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).

As discussed above, Petitioner has been enrolled in, and receiving services through, the Children's Serious Emotional Disturbance Home and Community-Based Services

Waiver (SEDW) Program; and, with respect to that program, the applicable version of the Medicaid Provider Manual (MPM) states in part:

SECTION 1 – GENERAL INFORMATION

The Children's Serious Emotional Disturbance Home and Community-Based Services Waiver (SEDW) Program provides services that are enhancements or additions to Medicaid state plan coverage for children up to age 21 with serious emotional disturbance (SED) who are enrolled in the SEDW. MDHHS operates the SEDW through managed care contracts.

1.1 KEY PROVISIONS

The SEDW enables Medicaid to fund necessary home and community-based services for children up to age 21 with SED who meet the criteria for admission to a state inpatient psychiatric hospital and/or who are at risk of hospitalization without waiver services. The CMHSP is responsible for assessment of potential waiver candidates.

Application for the SEDW is made through the CMHSP. The CMHSP is responsible for the coordination of the SEDW services. The Wraparound Facilitator, the child and their family and friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in an IPOS.

A SEDW beneficiary must receive at least one SED waiver service per month in order to retain eligibility.

1.2 ELIGIBILITY

To be eligible for this waiver, the child must meet all of the following criteria.

- Live in a participating county (refer to the Coverage Area subsection in this chapter); OR
- Live in foster care in a non-participating county pursuant to placement by MDHHS or the court of a participating county, with SEDW oversight by a participating county's CMHSP; AND

- Reside with the birth or adoptive family or have a plan to return to the birth or adoptive home; OR
- Reside with a legal guardian; OR
- Reside in a foster home with a permanency plan; OR
- Be age 18 or age 19 and live independently with supports; AND
- Meet current MDHHS criteria for the state psychiatric hospital for children; AND
- Medicaid eligibility criteria and become a Medicaid beneficiary; AND
- Demonstrate serious functional limitations that impair the ability to function in the community. As appropriate for age, functional limitation will be identified using the Child and Adolescent Functional Assessment Scale (CAFAS®) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS®):
 - CAFAS® score of 90 or greater for children age 7 to 12; OR
 - CAFAS® score of 120 or greater for children age 13 to 18; OR
 - For children age 3 to 7, elevated PECFAS® subscale scores in at least one of these areas: self-harmful behaviors, mood/emotions, thinking/communicating or behavior towards others; AND
- Be under the age of 18 when approved for the waiver. If a child on the SEDW turns 18, continues to meet all non-age-related eligibility criteria, and continues to need waiver services, the child can remain on the waiver up to their 21st birthday.

1.3 COVERAGE AREA

Waiver services are limited to eligible children (up to the federally-approved maximums) living in the counties whose CMHSPs have:

- An approved SED Waiver plan with MDHHS;
- Demonstrated strong collaboration with essential community partners;
- The capacity to provide intensive community-based services; and
- The fiscal capacity to manage interagency funding appropriately or have been approved to participate in the MDHHS SED Waiver Pilot program.

*MPM, January 1, 2024 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services
Children's Serious Emotional Disturbance
Home and Community-Based Services Waiver Appendix
Pages B1-B2*

Here, as discussed above, Respondent terminated Petitioner's enrollment in the SEDW Program pursuant to the above policies and on the basis that Petitioner was found to have an insufficient CAFAS score during the most recent assessment.

In support of that decision, the Waiver Coordinator at HealthWest described the history of Petitioner's case with HealthWest, including the review and CAFAS assessment completed on January 9, 2024. She also testified that, given Petitioner's age and score of 110 on that CAFAS assessment, Petitioner did not meet the eligibility criteria set by the State of Michigan and had to be disenrolled from the SEDW Program. The Waiver Coordinator further testified that Petitioner may reapply in the future if there is regression, and that all the services Petitioner was receiving are still available through Medicaid, albeit at a different rate.

In response, Petitioner's representative testified that she has now received the CAFAS report and believes it is inaccurate given Petitioner's continuing impairments, including issues with Petitioner's behavior towards others and Petitioner's thinking, at school, home, and the community. Petitioner's representative also testified that, while Petitioner has had some improvement in the past year and the SEDW Program has been beneficial in stabilizing Petitioner, Petitioner's CAFAS score has always been too low; attempts to have it corrected throughout the year were ignored, with Petitioner's representative told that only the annual review mattered; and that it remains too low

given her continuing issues. Petitioner's representative also went through different subscales on the CAFAS and explained why she believed that some subscale scores, including the ones for community, behavior toward others, moods/emotions and thinking, are inaccurate. Petitioner's representative further testified that Petitioner has stabilized, but she still has significant impairments, including a need for around-the-clock supervision, and Petitioner's family does not want to risk regression and cycling back through hospitalizations if the SEDW Program is terminated.

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

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

The criteria for the SEDW Program expressly require that someone of Petitioner's age have a CAFAS score of 120 or greater and it is undisputed that Petitioner was scored as a 110 during the January 9, 2024, assessment.

However, Petitioner's representative credibly testified as to why she believes that score is inaccurate, and that testimony is essentially undisputed. Respondent presented no evidence or witness contradicting it, with the Waiver Coordinator from HealthWest who testified uninvolved with the CAFAS assessment that was conducted, and, instead, relying solely on the test results she was given. At most, there was some documentation in the record regarding improvement in Petitioner's behavior, in addition to Petitioner's representative's own testimony that Petitioner has stabilized, but no one explained how that translated to the score that was found or supported the score itself.

Accordingly, given the limited record in this case and Petitioner's representative's credible testimony, the undersigned Administrative Law Judge finds that Petitioner has met her burden of proof; Respondent's decision to terminate her enrollment in the SEDW Program should be reversed; and Petitioner should be reassessed for that program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly terminated Petitioner's enrollment in the SEDW Program.

IT IS THEREFORE ORDERED that:

The Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's eligibility for the SEDW Program.

SK/sj

Steven Kibit
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 19th day of April 2024

S. James

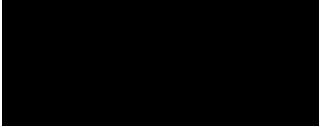
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Petitioner
