GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[redacted]

Date Mailed: April 29, 2024
MOAHR Docket No.: 24-003014
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq*. and 42 CFR 438.400 *et seq*. upon Petitioner's request for a hearing.

After due notice, a hearing was held on April 25, 2024. [redacted] Guardian appeared and testified on Petitioner's behalf. Rebecca Mueller, Supports Coordinator and William Griffin, Home Supervisor, appeared as witnesses for Petitioner.

George Motakis, Fair Hearing Officer, Lakeshore Regional Entity, appeared and testified on behalf of Respondent, Network 180. (CMH or Department). Julie Minor, Utilization Review Specialist, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's request for continued Personal Care (PC) and Community Living Supports (CLS) in a Specialized Residential setting?

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 an adult Medicaid beneficiary who is eligible to receive services through the Department. (Exhibit A; Testimony.)

2. Department is under contract with the Michigan Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the Department service area. (Exhibit A; Testimony.)

3. Petitioner currently resides at Thresholds Chamberlain Adult Foster Care (AFC) home, which is a specialized residential setting. (Hearing Summary [HS]; Exhibit A; Testimony.)

4. Petitioner is diagnosed with autism spectrum disorder, schizoaffective disorder, bipolar type, an unspecified mood disorder, and a moderate intellectual disability. (HS; Exhibit A; Testimony.)

5. Petitioner has a behavioral specialist through Department to assess and reduce the targeted behaviors of biting, physical aggression, and to increase functional communication. (HS; Exhibit A; Testimony.)

6. In addition to the behavioral specialist provided, Petitioner also receives Support Coordination and psychiatric services. (HS; Exhibit A; Testimony.)

7. On or around March 2022, objectives were set for Petitioner to reduce his self-injurious behaviors including biting behaviors to five instances or less per month for six consecutive months. (HS; Exhibit A; Testimony.)

8. As of December 2023, the Petitioner had the following data collected and submitted regarding self-injurious behaviors:

Date	Self-Injurious Behaviors	Actual or Attempted Grabbing arms or Pushing	Pinching/Hitting
December 2022	3	1	0
January 2023	1	2	0
February 2023	1	2	1
March 2023	1	0	0
April 2023	1	0	0
May 2023	0	2	0
June 2023	0	1	1

July 2023	3	1	1
August 2023	0	0	0
September 2023	4	1	0
October 2023	1	0	0
November 2023	1	2	1

[1]

9. As of October 23, 2023, Petitioner's behaviors had remained at a baseline with no major concerns over a year with no anticipated changes. (HS; Exhibit A; Testimony.)

10. On December 1, 2023, an Individualized Plan of Service (IPOS) meeting took place. During the meeting, it was reported Petitioner engages in self-injuries behaviors 1-2 times a month with physical aggression occurring 1-2 times a month. Staff also reported the need to intervene at least 5-10 times a week to prevent further escalation of physical aggression. (HS.)

11. On January 10, 2024, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated comprehensive community supports and personal care services were being denied as the clinical documentation did not establish the medical necessity for the services as the Petitioner's conditions have improved and have been stable over the prior year. (HS; Exhibit A; Testimony.)

12. On January18, 2024, the Department received from Petitioner, a local level appeal. (HS; Exhibit A; Testimony.)

13. On January 25, 2024, the Department sent Petitioner a Notice of Appeal Denial. The notice indicated Petitioner's appeal was denied as a result of Petitioner doing well with limited assistance placing Petitioner at the light residential rate. (HS; Exhibit E; Testimony.)

14. On March 27, 2024, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit E.)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the

[1] Hearing Summary.

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.[2]
>
> 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.[3]

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…[4]

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 Michigan Department of Health and Human Services (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with MDHHS to provide services under the waiver pursuant to its contract obligations with the Department.

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[2] 42 CFR 430.0.
[3] 42 CFR 430.10.
[4] 42 US Code §1396n(b).

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service.[5]

The CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

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

> **SECTION 11 – PERSONAL CARE IN LICENSED SPECIALIZED RESIDENTIAL SETTINGS**
>
> Personal care services are those services provided in accordance with an individual plan of service to assist a beneficiary in performing their own personal daily activities. For children with serious emotional disturbance, personal care services may be provided only in a licensed foster care setting or in a Child Caring Institution (CCI) if it is licensed as a "children's therapeutic group home" as defined in Section 722.111 Sec. 1(f) under Act No. 116 of the Public Acts of 1973, as amended. For children with intellectual/ developmental disabilities, services may be provided only in a licensed foster care or CCI setting with a specialized residential program certified by the state. These personal care services are distinctly different from the state plan Home Help program administered by MDHHS.
>
> Personal care services are covered when authorized by a physician or other health care professional in accordance with an individual plan of services and rendered by a qualified person. Supervision of personal care services must be provided by a health care professional who meets the qualifications contained in this chapter.
>
> **11.1 SERVICES**
>
> Personal care services include assisting the beneficiary to perform the following:
>
> - Assistance with food preparation, clothing and laundry, and housekeeping beyond the level required

[5] *See 42 CFR 440.230.*

by facility licensure, (e.g., a beneficiary requires special dietary needs such as pureed food);

- Eating/feeding;
- Toileting;
- Bathing;
- Grooming;
- Dressing;
- Transferring (between bed, chair, wheelchair, and/or stretcher);
- Ambulation; and
- Assistance with self-administered medications.

"Assisting" means staff performs the personal care tasks for the individual; or performs the tasks along with the individual (i.e., some hands-on); or otherwise assists the individual to perform the tasks himself/herself by prompting, reminding, or by being in attendance while the beneficiary performs the task(s).

11.2 PROVIDER QUALIFICATIONS

Personal care may be rendered to a Medicaid beneficiary in a Foster Care or CCI setting licensed and certified by the state under the 1987 Michigan Department of Health and Human Services Administrative Rule R330.1801-09 (as amended in 1995). For children birth to 21, personal care may be rendered to a Medicaid beneficiary in a Child Caring Institution setting with a specialized residential program facility licensed by the State for individuals with I/DD under Act No. 116 of the Public Acts of 1973, as amended, and Act No. 258 of the Public Acts of 1974, as amended.

11.3 DOCUMENTATION

The following documentation is required in the beneficiary's file in order for reimbursement to be made:

- An assessment of the beneficiary's need for personal care.

- An individual plan of services that includes the specific personal care services and activities, including the amount, scope and duration to be delivered that is reviewed and approved at least once per year during person-centered planning.

- Documentation of the specific days on which personal care services were delivered consistent with the beneficiary's individual plan of service.

* * * *

17.2 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF BEHAVIORAL HEALTH 1915(I) STATE PLAN AMENDMENT (SPA) SUPPORTS AND SERVICES [RE-NUMBERED, TITLE REVISED & CHANGES MADE 4/1/23]

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by BH 1915(i) SPA supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to ensure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether BH 1915(i) SPA supports and services alone, or in combination with State Plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in their community; and without such services and supports, would be impossible to attain.

* * * *

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and

- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and

- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies. (Emphasis added)

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

Deny services that are:

- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;

- experimental or investigational in nature; or

- for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or

- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

> A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.[6]

Petitioner must prove, by a preponderance of the evidence, that he meets the above medical necessity criteria for Personal Care and Community Living Supports (CLS) in a Specialized Residential setting, i.e., those services at the Base Residential rate.

Petitioner's AHR argues that Petitioner meets the medical necessity criteria for Personal Care and Community Living Supports (CLS) in a Specialized Residential setting because the behaviors while seemingly improved are still very intense. Petitioner also went on to argue that if services are removed, the behaviors will return or intensify.

The Department argues that Petitioner does not meet the medical necessity criteria for Personal Care and Community Living Supports (CLS) in a Specialized Residential setting because the documentation provided for review and consideration shows Petitioner to have improved over the past year, and that his behaviors did not meet the criteria to justify services at the base behavioral daily rate.

Having considered the parties arguments in full, it is determined that Petitioner has failed to meet his burden of proof and, therefore, the Department properly denied Petitioner's request for continued Personal Care and Community Living Supports (CLS) in a Specialized Residential setting.

Under Medicaid's medical necessity criteria, there exists a more clinically appropriate, less restrictive and more integrated setting in the community for Petitioner. Specifically, given the evidence presented, Petitioner's needs can be met in a general AFC home, with PC and CLS assistance through the Department.

As indicated above, Personal Care and Community Living Supports (CLS) in a Specialized Residential setting are only authorized when a beneficiary's needs are "beyond the level required by facility licensure." Here, Petitioner was receiving Personal Care and Community Living Supports (CLS) in a Specialized Residential setting for the targeted behaviors of biting and self-injurious behaviors. However, as indicated above, there is documentation indicating these behaviors have either stabilized or improved. Additionally, if Petitioner regresses, the Petitioner can always make a new request for additional services and provide the additional records that substantiate the need.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department properly denied Petitioner's request for Personal Care and Community Living Supports (CLS) in a Specialized Residential setting.

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[6] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, July 1, 2023, pp 12-14, 90-91, 145-146.

IT IS THEREFORE ORDERED that:

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

CA/pe

Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

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

Via Electronic Mail:

DHHS Department Contacts

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Via Electronic and First Class Mail :

Authorized Hearing Representative

[redacted]

Petitioner

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