



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: October 22, 2024
MOAHR Docket No.: 24-009204
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules and the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon a request for a hearing.

After due notice, a telephone hearing was held on October 2, 2024.

[REDACTED] Petitioner's legal guardian, appeared and testified on Petitioner's behalf. Dr. Amy Rosinski, Petitioner's Psychiatrist, and Dr. Anna Burke, Petitioner's Attending Physician, also testified as witnesses for Petitioner.

April Higgins, Provider Network Manager, appeared and testified on behalf of the Respondent Community Mental Health for Central Michigan (Respondent). Elizabeth Cunningham, Access Services Manager, also testified as a witness for Respondent.

During the hearing, Petitioner's request for hearing was admitted into the record without objection as Exhibit A, pages 1-16. Respondent submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-101.¹

ISSUE

Did Respondent properly decide to terminate Petitioner's services?

¹ Petitioner also submitted an evidence packet as a proposed exhibit, but it was not admitted because the packet had not been sent to Respondent prior to the hearing. The hearing proceeded without the proposed exhibit, and it was not found that the hearing needed to be continued to allow consideration of the proposed exhibit.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a [REDACTED] year-old Medicaid beneficiary. (Exhibit A, page 16).
2. Beginning when he was [REDACTED] old, Petitioner started having seizures and he was diagnosed with Lennox-Gastaut syndrome and childhood generalized epilepsy. (Exhibit A, pages 44, 58, 65).
3. The seizures were eventually controlled through a ketogenic diet, he was able to come off his medications, and he stopped having seizures when he was [REDACTED] years old. (Exhibit A, page 44).
4. He was diagnosed with a cognitive and development delay. (Exhibit A, pages 58, 85; Testimony of Psychiatrist).
5. In school, Petitioner has an Individualized Education Program (IEP); and he received special education services, speech therapy, and language therapy through his school. (Exhibit A, page 33).
6. While he was in 12th grade, Petitioner was evaluated for services through Michigan Rehabilitation Services (MRS). (Exhibit A, page 32).
7. As part of that evaluation, a National and Michigan Certified Psychologist completed a Psycho-Educational Report. (Exhibit A, pages 32-40).
8. That psychologist found that Petitioner had a full-scale IQ score of 77, which is borderline impaired. (Exhibit A, page 35).
9. He also recommended that Petitioner receive services through MRS due to Petitioner's impairments and borderline intellectual functioning. (Exhibit A, page 40).
10. In 2021, Petitioner began having seizures again. (Exhibit A, page 44).
11. Despite hospitalizations, tests and continuing treatment, the seizures have continued, with Petitioner also displaying catatonia. (Exhibit A, pages 47-48, 58, 83-85, 90-92; Testimony of Psychiatrist).
12. Petitioner lost his job as a landscaper due to his ongoing medical concerns. (Exhibit A, page 85).
13. In 2024, Petitioner applied for services through Respondent, a Community Mental Health Services Provider (CMHSP). (Testimony of Access Services Manager).

14. He was determined to be eligible and approved for services. (Testimony of Access Services Manager).
15. Petitioner was approved for targeted case management services, but he was also requesting additional services at that time. (Exhibit A, page 26; Testimony of Access Services Manager).
16. On May 23, 2024, Respondent completed a Psychosocial Assessment with respect to Petitioner. (Exhibit A, pages 16-31).
17. In that assessment, Respondent documented Petitioner's diagnoses, including Lennox-Gastaut syndrome with status epilepticus; a low intellectual quotient (IQ) score; dyslexia and alexia; specific learning disorders; obsessive-compulsive disorder; and catatonia. (Exhibit A, pages 26-27).
18. It also found that Petitioner's conditions affect his balance, memory, and ability to complete daily tasks, with Petitioner also experiencing trouble with speech and comprehension and needing reminders to dress and take medications. (Exhibit A, page 26).
19. Respondent further noted the psychological evaluation performed in 2017, which it had not obtained earlier. (Exhibit A, page 26; Testimony of Access Services Manager).
20. Regarding eligibility for services, Respondent found that, while Petitioner has a severe, chronic condition that is attributed to a mental or physical impairment, or a combination of both, and that is likely to continue indefinitely, Petitioner did not have sufficient substantial functional limitations that manifested before the age of 22 to meet eligibility for services. (Exhibit A, page 29; Testimony of Access Services Manager).
21. On June 13, 2024, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that Petitioner's targeted case management services would be terminated as of June 24, 2024. (Exhibit A, pages 3-9).
22. With respect to the reason for the decision, the Notice of Adverse Benefit Determination stated in part:

You do not meet the clinical eligibility criteria for services.

You do not meet Medicaid eligibility criteria for services as a person with a serious mental illness, a person with a developmental disability, a child with a serious emotional disorder or a person with a substance abuse disorder.

Does not meet the criteria of an individual with IDD that results in substantial limitations in 3 or more of the following areas of major life activity: Self care, Receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency and is manifested before the individual is 22 years old.

Exhibit A, page 3

23. On July 3, 2024, Petitioner's representative filed an Internal Appeal with Respondent with respect to the decision to terminate services. (Exhibit A, page 10).
24. On July 18, 2024, Respondent sent Petitioner written notice that the Internal Appeal had been denied. (Exhibit A, pages 10-15).
25. With respect to the reason for the denial, the notice stated:

Based on the IQ test from 2017 in which he scored a 78, [Petitioner] does not meet criteria for an I/DD designation. A chart review was completed and review of the documents from U of M Psychiatry and Neurology and it appears that Catatonia is due to the Lennox-Gastaut Syndrome and not a severe and persistent mental illness therefore he would not meet criteria for SPMI.

Per records it appears [Petitioner] did well on the Ketogenic diet; family may consider trying the ketogenic diet again as that appeared to give [Petitioner] many symptom free years

Exhibit A, page 10

26. On August 19, 2024, MOAHR received a request for hearing filed in this matter regarding Respondent's decision to terminate Petitioner's services. (Exhibit #1, pages 1-16).

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).

Eligibility for services through Respondent is set by Department policy as outlined in the Medicaid Provider Manual (MPM). Specifically, the applicable version of the MPM states in the pertinent part that:

1.6 BENEFICIARY ELIGIBILITY

A Medicaid beneficiary with mental illness, serious emotional disturbance or developmental disability who is enrolled in a Medicaid Health Plan (MHP) is eligible for specialty mental health services and supports when their needs exceed the MHP benefits. (Refer to the Medicaid Health Plans Chapter of this manual for additional information.) Such need must be documented in the individual's clinical record.

*MPM, July 1, 2024 version
Behavioral Health and Intellectual and
Developmental Disability Support and Services Chapter
page 2*

The State of Michigan's Mental Health Code defines serious mental illness and serious emotional disturbance as follows:

(3) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) "V" codes in the diagnostic and statistical manual of mental disorders.

(4) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance. Serious mental illness does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance abuse disorder.
- (b) A developmental disorder.
- (c) A "V" code in the diagnostic and statistical manual of mental disorders.

MCL 330.1100d

Additionally, with respect to developmental disabilities, the Mental Health Code also provides in part:

(27) "Developmental disability" means either of the following:

- (a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
 - (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - (ii) Is manifested before the individual is 22 years old.
 - (iii) Is likely to continue indefinitely.
 - (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (A) Self-care.
 - (B) Receptive and expressive language.
 - (C) Learning.

- (D) Mobility.
 - (E) Self-direction.
 - (F) Capacity for independent living.
 - (G) Economic self-sufficiency.
- (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a(27)

Here, Respondent decided to terminate Petitioner's services pursuant to the above policies and statutes, and on the basis that Petitioner is not eligible for ongoing services through Respondent as a person with either a severe mental illness or a developmental disability.

In appealing that decision, 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 it had at the time it made that decision.

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

The sole issue in this case is whether Petitioner meets the criteria for having a developmental disability, and, as discussed above, in order to meet that criteria, Petitioner must have a severe, chronic condition attributable to a mental or physical impairment, or a combination of mental and physical impairments, that manifested before he was [REDACTED] years old; that is likely to continue indefinitely; and that results in a substantial functional limitation in three or more areas of major life activity.

In finding that Petitioner does not meet the criteria for eligibility, Respondent determined that Petitioner did not have substantial functional limitation in three or more areas of major life activity prior to age [REDACTED]

However, in doing so, Respondent improperly conflated two of the separate requirements: the requirement that Petitioner's condition manifested before he was [REDACTED] years old and the requirement that his condition resulted in substantial functional limitations.

To meet the definition of developmental disability, a beneficiary must have a severe, chronic condition that both manifested before he or she was ■■■ years old and that resulted in substantial functional limitations in three or more of the identified major life activities, but there is simply no requirement that the substantial functional limitations must also have started or manifested prior to the beneficiary turning ■■■ years old. The two requirements are separate given the plain language of the statute, and, by specifically adding an age requirement to the substantial functional limitation requirement, Respondent erred.

Moreover, in this case, Petitioner appears to meet all the separate requirements individually. He has severe and chronic conditions that are attributable to a mental or physical impairment or a combination of mental and physical impairments, as found by Respondent; the conditions manifested before he was ■■■ years old, regardless of whether one of them was absent for a time and only reemerged after he was ■■■ years old; his conditions are likely to continue indefinitely, as found by Respondent; and those conditions have resulted in substantial limitations in 3 or more areas of major life activity.

Accordingly, given Respondent's misapplication of the applicable criteria and the record regarding Petitioner's historical and ongoing conditions and impairments, Respondent erred in determining that Petitioner did not meet the eligibility requirements for services through it and its decision must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly decided to terminate Petitioner's services.

IT IS THEREFORE ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's services.

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 22nd day of October 2024.

S. James

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

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