



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Date Mailed: December 10, 2024
MOAHR Docket No.: 24-009414
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On August 23, 2024, Petitioner [REDACTED] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on December 4, 2024, pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Attorney Anastassia Kolosova represented Petitioner. Petitioner had two witnesses: [REDACTED] Petitioner's mother; and Melissa Heuker, director of student services at Whitmore Lake Public Schools. Hearing Representative Evan George represented Respondent Washtenaw County Community Mental Health (WCCMH). Respondent had two witnesses: Krista DeWeese, program administrator, and Kim Diebboll, service utilization manager.

Sworn testimony was provided by both parties, and the following exhibits were admitted into evidence:

| | |
|-----------|--|
| Exhibit 1 | Part 438 documents |
| Exhibit 2 | Letters from Whitmore Lake Public Schools |
| Exhibit 3 | Part 438 request |
| Exhibit 4 | Individual plan of service dated May 2024 |
| Exhibit 5 | Internal appeal transcript |
| Exhibit 6 | Individual plan of service dated March 2023 |
| Exhibit D | Letters from Whitmore Lake Public Schools |
| Exhibit E | Physician's statement dated February 2, 2024 |
| Exhibit I | Medicaid Provider Manual (excerpts) |
| Exhibit J | Local policy on community living supports |

Additional exhibits were offered into evidence but not admitted. Respondent offered proposed exhibit C, but it was not admitted into evidence for reasons stated on the record. Respondent offered proposed exhibit E, but only the first page of the proposed

exhibit was admitted into evidence for reasons stated on the record. Respondent offered proposed exhibit H, but it was not admitted into evidence for reasons stated on the record.

ISSUE

Did Respondent properly reduce Petitioner's community living supports (CLS) by 12 hours per week?

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 has been diagnosed with autism spectrum disorder (ASD) and pediatric acute onset neuropsychiatric syndrome (PANS).
2. Petitioner is supervised every day for 24 hours per day.
3. In March 2023, Respondent completed a new individual plan of service (IPOS) for Petitioner. The IPOS stated that Respondent approved Petitioner for 116 hours of CLS per week from March 18, 2023, through May 17, 2023. The IPOS stated that Petitioner received 16.75 hours of home help services (HHS) per week, Petitioner received 12 hours of day activity per week, and Petitioner received 23.25 hours of natural supports per week. The total amount of Petitioner's supports was 168 hours per week. (Exhibit 6, p. 1)
4. Respondent has a policy on CLS that states in pertinent part, "CLS cannot supplant services otherwise available through education services, state funded services, or services otherwise available through other insurance benefits." (Exhibit J, p. 2)
5. Respondent informed Petitioner's mother that Petitioner must submit to a school evaluation to determine what services Petitioner may be eligible for from school. Respondent has repeatedly provided this information to Petitioner's mother since before 2020. Petitioner has not been enrolled in school since sometime before 2020.
6. On January 25, 2024, Petitioner's mother contacted Whitmore Lake Public Schools to inquire about obtaining services for Petitioner from the school. Petitioner's mother did not officially request services for Petitioner from the school at that time. Rather, Petitioner's mother gathered information about the services that may be available for Petitioner from the school.
7. On February 2, 2024, Petitioner's physician, Dr. Kabisch, completed a physician's statement of child's medical condition for homebound/hospitalized

services for Whitmore Lake Public Schools. In the form, Dr. Kabisch certified that Petitioner cannot attend school part time in either a regular or special education classroom. Dr. Kabisch certified that Petitioner needed homebound services. Dr. Kabisch asserted that Petitioner's condition would continue for approximately 52 weeks. (Exhibit E)

8. Based on Petitioner's need for homebound services, Whitmore Lake Public Schools would provide a minimum of two non-consecutive hours per week of school services if Petitioner was enrolled. Whitmore Lake Public Schools would not know the precise number of hours per week of school services that Petitioner would be eligible for until Whitmore Lake Public Schools completed Petitioner's school evaluation.
9. On April 16, 2024, Respondent reviewed Petitioner's CLS. Respondent determined that Respondent could not supplant the services that Petitioner was eligible to receive from school. Respondent was unable to determine what services Petitioner was eligible to receive from school because Petitioner had not completed a school evaluation as instructed. Respondent determined that the average number of hours of school services that beneficiaries received was 35-40 hours per week based on its experience, so Respondent decided to use a conservative estimate of 12 hours per week for the number of hours of school services that Petitioner would likely be eligible for. Accordingly, Respondent decided to reduce Petitioner's CLS by 12 hours per week for school services.
10. On April 16, 2024, Respondent mailed an adverse benefit determination (ABD) notice to Petitioner's mother to notify her that Respondent was going to reduce Petitioner's CLS by 12 hours per week, effective April 27, 2024. The adverse benefit determination notice stated that the reduction was for school. The adverse benefit determination notice stated, "until [Petitioner] participates in a school evaluation, the weekly amount of school hours [Petitioner] is eligible for is unknown. Based on the average weekly school hours of 35-40 hours/week (varies per consumer), the 12-hour weekly reduction of CLS is a conservative estimate of how many hours [Petitioner] may be eligible for school services. . . ." (Exhibit 1, p. 1)
11. On May 7, 2024, Petitioner's mother officially requested services for Petitioner from Whitmore Lake Public School. (Exhibit D, pp. 1-4)
12. Petitioner has attempted to complete a school evaluation with Whitmore Lake Public Schools since May 7, 2024, but Petitioner's attempts have not been successful yet.

RULINGS ON
PETITIONER'S PROPOSED FINDINGS OF FACT

Petitioner submitted proposed findings of fact pursuant to Mich Admin Code, R 792.10133(1). Petitioner's 22 proposed findings of fact follow with a ruling on each. To the extent that there is a conflict between the findings of fact made above and any of Petitioner's findings of fact that are accepted as substantiated, the findings of fact made above shall take precedence.

1. Petitioner is a 24-year-old woman living with diagnoses which include autism and PANS. Ruling: finding of fact substantiated by the evidence.
2. Due to her PANS diagnosis, Petitioner is immunocompromised. Ruling: finding of fact not substantiated by the evidence.
3. Petitioner receives services, including Community Living Supports, under the Habilitation Supports Waiver. Ruling: finding of fact substantiated by the evidence.
4. On April 16, 2024, WCCMH issued an ABD reducing Petitioner's CLS by 12 hours per week for the reason of "12 hours/week being deducted for school," calling the 12 hours a "conservative estimate" and comparing it to the "average weekly school hours of 35-40 hours/week (varies per consumer)." Ruling: finding of fact substantiated by the evidence.
5. The ABD did not state that failure to exchange information or sign releases was a reason for the reduction. Ruling: finding of fact substantiated by the evidence.
6. Petitioner is not, and was not during any relevant time period, receiving any school services. Ruling: finding of fact substantiated by the evidence.
7. In response to WCCMH's attempts to reduce CLS services, Petitioner's guardian commenced the school evaluation preliminaries with Whitmore Lake Public Schools prior to the ABD. Ruling: finding of fact not substantiated by the evidence.
8. The school evaluations are proceeding with accommodations. Ruling: finding of fact substantiated by the evidence.
9. After the ABD was issued, Petitioner requested WCCMH to provide "all documents, records and other information relevant to the adverse benefit determination, including all records (medical, school, and otherwise) relied upon to make the decision, all Utilization Management notes or other records created at all UM meetings related to this ABD, and any medical necessity criteria, processes, strategies, or evidentiary standards used in setting coverage limits." Ruling: finding of fact substantiated by the evidence.

10. WCCMH counsel has provided documents in response to Petitioner's request. Ruling: finding of fact substantiated by the evidence – as modified. Finding of fact modified to exclude the word "counsel."
11. WCCMH has provided no documentation to support its claim of available "average weekly school hours," to show how it reached the "conservative estimate" of 12 hours, or to support the conclusion that any such averages or estimates are relevant to Petitioner's individualized determination of medical necessity. Ruling: finding of fact substantiated by the evidence.
12. Dr. Kabisch, Petitioner's doctor, issued a homebound certification under Michigan's school code on February 2, 2024. This homebound certification states Petitioner should have homebound schooling due to her PANS and lasts for 52 weeks. Ruling: finding of fact substantiated by the evidence – as modified. Finding of fact modified to exclude the words "under Michigan's school code."
13. Dr. Kabisch provided this homebound certification to Whitmore Lake Public Schools. Ruling: finding of fact substantiated by the evidence.
14. Whitmore Lake Public Schools accepted this homebound certification. Ruling: finding of fact substantiated by the evidence.
15. Dr. Kabisch also mailed a copy of this homebound certification to WCCMH. It was postmarked February 9, 2024. Ruling: finding of fact substantiated by the evidence.
16. WCCMH placed this homebound certification in Petitioner's file and provided the homebound certification to Petitioner as a document relevant to the ABD. Ruling: finding of fact substantiated by the evidence.
17. When issuing the ABD, WCCMH did not rely on any other medical doctor's opinions regarding Taylor's need for homebound services. Ruling: finding of fact substantiated by the evidence.
18. Prior to the April 16, 2024, ABD, WCCMH had received and reviewed three Whitmore Lake Public School letters. All three letters stated that Petitioner would receive two hours of virtual homebound school services per week if she met eligibility criteria. Ruling: finding of fact substantiated by the evidence.
19. Those three Whitmore Lake Public School letters are reliable estimates of the number of hours of school services likely available to Petitioner if she were able to complete the school evaluations. Ruling: finding of fact not substantiated by the evidence.

20. The evidence in the record does not support the conclusion that 12 hours of school services was or is likely to be available to Petitioner. Ruling: this is not a finding of fact; this is a legal conclusion.
21. The evidence in the record does not support WCCMH's conclusion that 12 hours is an accurate estimate of school services available to Petitioner. Ruling: this is not a finding of fact; this is a legal conclusion.
22. The evidence in the record does not support WCCMH's reduction of Petitioner's CLS hours by 12 per week "for school." Ruling: this is not a finding of fact; this is a legal conclusion.

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

In this case, Petitioner disagrees with Respondent's decision to reduce Petitioner's CLS by 12 hours per week. Respondent reduced Petitioner's CLS by 12 hours per week because Respondent determined that Petitioner was eligible for services from school. Respondent determined that it could not supplant the services that Petitioner was eligible for from school, and Respondent estimated that Petitioner was eligible for 12 hours of services from school each week, so Respondent reduced Petitioner's CLS by 12 hours per week so that it was not supplanting the services that Petitioner was eligible for from school.

The relevant policy on this issue is contained in the Behavioral Health and Intellectual Developmental Disability Supports and Services Chapter of the *MDHHS Medicaid Provider Manual*. Community Living Supports (CLS) facilitate an individual's independence, productivity, and promote inclusion and participation. *MDHHS Medicaid Provider Manual* (October 1, 2024), Behavioral Health and Intellectual Developmental Disability Supports and Services Chapter, Section 15.1.A. The supports can be provided in the beneficiary's residence and in community settings; the supports cannot supplant other habilitation services or Medicaid covered services. *Id.* "For children and adults up to age 26 who are enrolled in school, CLS services are not intended to supplant services provided in school or other settings or to be provided during the times when the child or adult would typically be in school but for the parent's choice to home-school." *Id.* It is this last provision from the *MDHHS Medicaid Provider Manual* that Respondent is relying on.

The relevant provision states that it applies to "children and adults up to age 26 who are enrolled in school." Petitioner is not a child or adult up to age 26 who is enrolled in school because Petitioner is not enrolled in school. Petitioner has not been enrolled in school since sometime before 2020. Thus, the provision does not apply to Petitioner.

Therefore, the provision from the *MDHHS Medicaid Provider Manual* that Respondent relied on does not apply to Petitioner, so Respondent's decision to reduce Petitioner's CLS by 12 hours per week is not supported by the *MDHHS Medicaid Provider Manual*.

Respondent also asserted that its decision to reduce Petitioner's CLS by 12 hours per week was supported by Respondent's local policy. Respondent's local policy states in pertinent part, "CLS cannot supplant services otherwise available through education services, state funded services, or services otherwise available through other insurance benefits." This policy appears to be derived from the *MDHHS Medicaid Provider Manual*. However, Respondent's policy is much broader than the policy contained in the *MDHHS Medicaid Provider Manual* because Respondent's policy does not specify who it applies to whereas the *MDHHS Medicaid Provider Manual* specifies that it only applies to beneficiaries who are enrolled in school. In effect, Respondent's policy adds a requirement that beneficiaries must enroll in school. Although Respondent may assist beneficiaries to pursue services which they may be entitled to (such as school), there is no provision in the *MDHHS Medicaid Provider Manual* that states that Respondent may deny or reduce CLS if a beneficiary does not pursue services which the beneficiary may be entitled to. Thus, there is no provision in the *MDHHS Medicaid Provider Manual* that states Respondent can require a beneficiary to enroll in school to be eligible for CLS. Therefore, Respondent's local policy is not supported by the *MDHHS Medicaid Provider Manual*.

Respondent cited medical necessity as a legal basis for its decision. Although medical necessity criteria apply to mental health services such as CLS, Respondent cannot rely on medical necessity criteria to support its decision to reduce Petitioner's CLS. Respondent decided to reduce Petitioner's CLS because Petitioner did not pursue services from school. As previously stated above, the provision of the *MDHHS Medicaid Provider Manual* that Respondent relied on does not apply to Petitioner because it only applies to beneficiaries who are enrolled in school, and Petitioner was not enrolled in school. Additionally, as previously stated above, Respondent could assist Petitioner to pursue services from school, but Respondent could not require Petitioner to enroll in school to be eligible for CLS.

In conclusion, Petitioner presented sufficient evidence to establish that Respondent's decision to reduce Petitioner's CLS by 12 hours per week was not in accordance with the *MDHHS Medicaid Provider Manual*. Thus, Petitioner established that Respondent's decision was not proper. Therefore, Respondent's decision is reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent did not properly reduce Petitioner's CLS by 12 hours per week.

IT IS ORDERED that Respondent's decision is **REVERSED**. Respondent shall begin to implement this decision within 10 days from the date of mailing of this decision and order.

A handwritten signature in black ink, appearing to read 'JK' followed by a stylized surname, positioned above a horizontal line.

Jeffrey Kemm
Administrative Law Judge

JK/pe

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:

Counsel for Petitioner

Anastassia Kolosova
Kyle M. Williams
Disability Rights Michigan
4095 Legacy Parkway
Lansing, MI 48911-4264
Akolosova@drmich.org
KWilliams@drmich.org

DHHS Department Contacts

Belinda Hawks
MDHHS BPHASA
320 S. Walnut St., 5th Floor
Lansing, MI 48913
MDHHS-BHDDA-Hearing-Notices@michigan.gov
HawksB@michigan.gov

Alyssa Stuparek
StuparekA@michigan.gov

Phillip Kurdunowicz
KurdunowiczP@michigan.gov

DHHS Department Representative

Evan George
Washtenaw County CMH and Livingston County CMH
555 Towner
Ypsilanti, MI 48197
Georgee@washtenaw.org

Via First Class Mail:

Petitioner and Authorized Hearing Representative

