

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: October 18, 2024
MOAHR Docket No.: 24-009762
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 video hearing was held on October 10, 2024. [REDACTED] Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED] Petitioner, and April Ceno, Director, Training & Treatment Innovations, Inc. (TTI), appeared as a witness for Petitioner.

Stacy Coleman, Fair Hearing Officer (FHO), appeared and testified on behalf of Respondent, Macomb County Community Mental Health Authority, (CMH or Department).

ISSUE

Did CMH properly deny authorization for physical therapy (PT) and occupational therapy (OT) services for Petitioner?

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 16-year-old Medicaid beneficiary who has been receiving services through CMH. (Exhibit A, p 1; Testimony.)
2. Petitioner is diagnosed with Chiari I Malformation, syrinx, cerebral ventriculomegaly, obstructive sleep apnea, acute chronic respiratory failure with hypoxia, VP shunts, central sleep apnea, teeth crowding, moderate persistent asthma, vocal cord dysfunction, acute cystitis without hematuria, steroid induced diabetes, constipation, ADHD, allergic rhinitis, insomnia, heart murmur, obstructive hydrocephalus, pituitary dwarfism,

steroid induced hyperglycemia, Empty Sella syndrome, vitamin D deficiency, muscle weakness, vasovagal syncope, back pain, generalized anxiety disorder, social anxiety disorder, panic attacks, psychological factors influencing general medical conditions, PTSD, tracheotomy dependence, mechanically assisted ventilation, and generalized abdominal pain. (Exhibit 1, pp 16, 18; Testimony.)

3. Petitioner lives in a private residence with her mother and father. (Exhibit 1, p 8; Testimony.)
4. Petitioner needs assistance in the areas of self-care, mobility, self-direction and capacity for independent living. Petitioner needs prompts to get dressed, she toilets independently but has accidents, and she needs prompts and reminders and supervision to complete grooming/hygiene tasks. Petitioner has needed physical assistance with bathing in the past. Petitioner cannot identify weather-appropriate clothing. Petitioner needs assistance with awareness of her care needs and planning time effectively. Petitioner needs complete assistance with understanding financial affairs, making informed medical decisions and reasoned choices regarding future plans. Petitioner needs step by step instructions to complete a task and prepare a simple meal. Petitioner needs assistance paying for and selecting goods. Petitioner needs assistance with identifying emergency situations and reacting to them appropriately. Petitioner cannot access the community independently. (Exhibit 1, p 21; Testimony.)
5. Petitioner has attended Algonquin Middle School in the past but is currently not attending school. (Exhibit 1, p 16; Testimony.)
6. In July 2024, Petitioner's clinician requested OT and PT. (Exhibit A, p 17; Testimony.)
7. On August 1, 2024, CMH sent Petitioner a Notice of Adverse Benefit Determination indicating that her request for OT and PT was denied. Specifically, the Notice indicated in part, "Based on a review of the documentation in the medical record in conjunction with the Medicaid Provider Manual it was determined that OT [& PT] services are not medically necessary." (Exhibit A, pp 3-23; Testimony.)
8. Petitioner's doctors and clinicians submitted letters and documentation indicating that OT and PT are medically necessary for Petitioner. (Exhibits 2, 3; Testimony.)
9. On August 29, 2024, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR).

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 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

CMH contracts with the Michigan Department of Health and Human Services to provide Medicaid services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only 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. See *42 CFR 440.230*.

With regard to occupational therapy, the Michigan Medicaid Provider (MPM) indicates:

3.19 OCCUPATIONAL THERAPY

Evaluation	Therapy
<p>Physician/licensed physician assistant/family nurse practitioner - prescribed activities provided by an occupational therapist licensed by the State of Michigan to determine the beneficiary's need for services and to recommend a course of treatment. An occupational therapy assistant may not complete evaluations.</p>	<p>It is anticipated that therapy will result in a functional improvement that is significant to the beneficiary's ability to perform daily living tasks appropriate to his chronological developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.</p> <p>Therapy must be skilled (requiring the skills, knowledge, and education of a licensed occupational therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed physical therapist, family member, or caregiver) would not be considered as a Medicaid cost under this coverage.</p> <p>Services must be prescribed by a physician/licensed physician's assistant/family nurse practitioner and may be provided on an individual or group basis by an occupational therapist or occupational therapy assistant, licensed by the State of Michigan or by an occupational therapy aide who has received on-the-job training. The occupational therapist must supervise and monitor the assistant's performance with continuous assessment of the beneficiary's progress, but on-site supervision of an assistant is not required. An aide performing an occupational therapy service must be directly supervised by a qualified occupational therapist who is on site. All documentation by an occupational therapy</p>

	assistant or aide must be reviewed and signed by the appropriately credentialed supervising occupational therapist.
--	---

*Michigan Medicaid Provider Manual
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
July 1, 2024, pp 21-22*

With regard to physical therapy, the MPM provides:

Evaluation	Therapy
Physician/licensed physician's assistant-prescribed activities provided by a physical therapist currently licensed by the State of Michigan to determine the beneficiary's need for services and to recommend a course of treatment. A physical therapy assistant may not complete an evaluation.	<p>It is anticipated that therapy will result in a functional improvement that is significant to the beneficiary's ability to perform daily living tasks appropriate to his chronological, developmental or functional status. These functional improvements should be able to be achieved in a reasonable amount of time and should be durable (i.e., maintainable). Therapy to make changes in components of function that do not have an impact on the beneficiary's ability to perform age-appropriate tasks is not covered.</p> <p>Physical therapy must be skilled (it requires the skills, knowledge, and education of a licensed physical therapist). Interventions that could be expected to be provided by another entity (e.g., teacher, registered nurse, licensed occupational therapist, family member or caregiver) would not be considered as a Medicaid cost under this coverage.</p> <p>Services must be prescribed by a physician/licensed physician's assistant and may be provided on an individual or group basis by a physical therapist or a physical therapy assistant currently licensed by the State of Michigan, or a physical therapy aide who is receiving on-the-job training. The physical therapist must supervise and monitor the assistant's performance with continuous</p>

	assessment of the beneficiary's progress. On-site supervision of an assistant is not required. An aide performing a physical therapy service must be directly supervised by a physical therapist that is on-site. All documentation by a physical therapy assistant or aide must be reviewed and signed by the appropriately credentialed supervising physical therapist.
--	---

*Michigan Medicaid Provider Manual
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
July 1, 2024, p 30*

CMH's FHO testified that Petitioner was receiving services through CMH's Certified Community Behavioral Health Clinic (CCBHC), including targeted case management, medication reviews, respite and community living supports. CMH's FHO testified that PT and OT were requested to deal with Petitioner's medical and physical concerns and there was no documentation suggesting that PT and OT were related to Petitioner's mental health diagnoses. CMH's FHO indicated that Petitioner's need for OT and PT would be better addressed by her medical and physical health providers. CMH's FHO testified that as of her last assessment, Petitioner's PHQ was 9 – suggesting moderate depression and her CAFAS score was 10 – suggesting mild problems. CMH's FHO indicated that there was no mention of Petitioner having an intellectual/developmental disability in the record.

Petitioner's mother testified that Petitioner has been diagnosed with a developmental disorder and suffers from PTSD due to all her medical issues. Petitioner's mother indicated that Petitioner's conditions began in 2019 and she is currently in the hospital due to a suicide attempt, so her mental conditions are not mild. Petitioner's mother noted that Petitioner was removed from school last year because she tried to commit suicide in the nurse's office.

Petitioner's mother testified that Petitioner can only walk the length of a room and is on a ventilator at night to help her breath. Petitioner's mother indicated that they took Petitioner to a genetics doctor when she was in the 4th grade because she was not growing at the speed of other children. Petitioner's mother indicated that Petitioner was diagnosed with Arnold-Chiari Malformation, Type 1, and has undergone numerous surgeries since then to try to deal with the problem. Petitioner's mother testified that this condition causes fluid in the spinal cord and is a very complex medical problem. Petitioner's mother indicated that Petitioner just wants to be like other kids and neuro pathways can be rebuilt up until age 24 so Petitioner needs to get help now.

Petitioner's mother testified that CMH had approved Petitioner for PT and OT and she was on a waiting list when the services were then denied. Petitioner's mother indicated that Petitioner's medical providers will only cover 20 sessions of PT and OT and

Petitioner has already used those services. Petitioner's mother testified that Petitioner is on a lot of heavy medications, is not stable, and her mental health conditions arise out of her physical disabilities. Petitioner's mother indicated that Petitioner can only get the PT and OT she needs through CMH.

The burden is on Petitioner to prove by a preponderance of evidence that PT and OT were improperly denied. Based on the evidence presented, Petitioner has met her burden of proof.

Here, Petitioner was denied OT and PT because CMH believes the PT and OT are only related to Petitioner's physical health diagnoses, not her mental health diagnoses, for which CMH has been providing care. While the undersigned agrees that the PT and OT are mostly related to Petitioner's physical health conditions, it appears from the record that Petitioner may also meet the mental health code definition of a person with a developmental disability:

(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.

MCL 330.1100a, Emphasis added.

Here, Petitioner is older than 5 years old and she has a severe, chronic condition that is a combination of mental and physical impairments, which manifested before age 22, is likely to continue indefinitely, and may result in substantial functional limitations in at least three of the above major life activities. (Emphasis added; see also Exhibit A, p 21.)

As such, it appears that Petitioner may have a developmental disability which might make Petitioner eligible for additional services, such as OT and PT. However, in the assessment Respondent submitted for the hearing it does not appear that Petitioner was screened for a developmental disability because that part of the assessment is blank. Respondent did, however, indicate in the assessment that Petitioner needed assistance with self-care, mobility, self-direction and capacity for independent living. (Exhibit A, p 21.)

Given this, Respondent should conduct a full assessment to determine if Petitioner meets the mental health code definition for a development disability. If Petitioner does meet that definition, the Medicaid Provider Manual indicates, “Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment: ... intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability . . .” (Emphasis added; MPM, §2.5.A.) Here, it appears that Petitioner may need OT and PT to treat her developmental disability, which is a combination of mental and physical impairments. Of course, if that turns out to be the case, CMH must coordinate with Petitioner’s health insurance to ensure that Medicaid is not paying twice for the same service. But, if Petitioner needs more OT and PT than her health insurance will provide, then CMH should cover Petitioner’s OT and PT if it determines Petitioner has a developmental disability. As such, CMH’s decision must be reversed to conduct said assessment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The CMH improperly denied Petitioner’s request for OT and PT without conducting a full assessment of whether Petitioner meets the mental health code definition of developmental disability.

IT IS THEREFORE ORDERED that:

The CMH’s decision is **REVERSED**.

Within 10 days of the issuance of this Order, Respondent shall take steps to begin an assessment to determine if Petitioner meets the mental health code definition of developmental disability.



Robert J. Meade
Administrative Law Judge

RM/sj

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

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 18th day of October 2024.

S. James

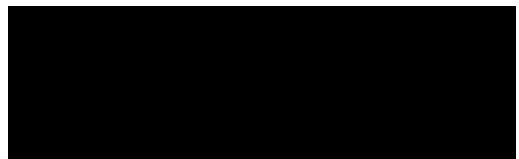
S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

DHHS Department Contact
Belinda Hawks
MDHHS
Lansing, MI 489133
Hawksb@michigan.gov
**MDHHS-BHDDA-Hearing-
Notices@michigan.gov**

DHHS Location Contact
David Pankotai
Macomb County CMHSP
Clinton Township, MI 48036
Mfhcorrespondence@mccmh.net

Via First Class & Electronic Mail:

Petitioner


Authorized Hearing Representative
