STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[redacted]

Date Mailed: October 18, 2024
MOAHR Docket No.: 24-010583
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 hearing was held on October 16, 2024. [redacted] Petitioner's sister and guardian, appeared and testified on Petitioner's behalf.

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

ISSUE

Did the CMH properly deny Petitioner's request for 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 CMH. (Exhibit A; Testimony.)

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

3. Petitioner is diagnosed with Schizophrenia. (Exhibit A, p 48; Testimony.)

4. Petitioner is currently authorized to receive Targeted Case Management, Medication Reviews, and Medication Administration through CMH. (Exhibit A, p 20; Testimony.)

5. As of his last assessment in February 2024, Petitioner was taking the following medications: Abilify, Benztropine, Hydroxyzine, Atarax, and Zyprexa. (Exhibit A, pp 28-29; Testimony.)

6. Petitioner currently resides in the James Street Group Home, a Specialized Residential Home. (Exhibit A, p 25; Testimony.) Petitioner was previously living in his own residential home, but he was removed from the home by Adult Protective Services (APS) and the police due to the condition of his home and his deteriorating mental state. (Exhibit A, p 34; Testimony.)

7. Within the past year, Petitioner has been hospitalized for a month and went back and forth between Milestones Crisis Residential and the hospital. (*Id.*)

8. Per the assessment conducted by CMH in February 2024, Petitioner is independent with his self-care, but requires assistance with reminding and supervision. (Exhibit A, p 49; Testimony.) Petitioner is incapable of self-direction. (Exhibit A, p 50; Testimony.) Petitioner cannot live independently and needs physical assistance with housekeeping, food preparation, shopping, home safety, and traveling. (Exhibit A, p 51; Testimony.)

9. Petitioner needs continued support with medication management, appointment management, health care management, and case management to ensure his health and safety. (Exhibit A, p 34; Testimony.)

10. In early 2024, Petitioner requested authorization for PC and CLS in a Specialized Residential setting. (Exhibit A, p 9; Testimony.)

11. On February 21, 2024, following a utilization review, CMH sent Petitioner a Notice of Adverse Benefit Determination, denying CLS and PC in a Specialized Residential setting. (Exhibit A, pp 9-15; Testimony.) Specifically, the Notice indicated, in relevant part:

> Your request for Community Living Supports and Personal Care in Licensed Specialized Residential has been denied. Based on the information in your clinical record, the documentation did not support the medical necessity to support a higher level of care. It was decided that you do not need the level of assistance with your community living tasks and your personal care to require this level of care.
>
> (Exhibit A, p 9.)

12. On March 28, 2024, following a local appeal, Petitioner was sent a Notice of Appeal Denial, which indicated in relevant part:

> Your Internal Appeal was denied for the service/item listed above because: after reading the treatment plan and annual assessment, there is not information that shows that [Petitioner] does meet the medical necessity criteria for Personal Care and

> Community Living Supports in a Specialized Residential so that you could move to a Specialized Residential setting. The record shows that [Petitioner] needs verbal prompts to complete activities of daily living but that he is physically independent in these activities. A licensed Adult Foster Care would be able to provide the daily supports for verbal prompts daily.
>
> (Exhibit A, pp 3-8; Testimony)

13. On March 4, 2024, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

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*

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…

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.

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. *See 42 CFR 440.230.*

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 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 icensed 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 annot 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.
>
> *Medicaid Provider Manual*
> *Behavioral Health and Intellectual and*
> *Developmental Disability Supports and Services Chapter*
> *January 1, 2024, pp 90-91; 145-146; 12-14*
> *Emphasis added*

Petitioner must prove, by a preponderance of the evidence, that he meets the above medical necessity criteria for PC and CLS in a Specialized Residential setting.

CMH's witness testified that Petitioner was placed in the James Street Group Home, a Specialized Residential Home, while the CMH looked for a less restrictive setting for Petitioner, such as an Adult Foster Care (AFC) home. CMH's witness indicated that the record shows that Petitioner is independent with his personal care needs but that an AFC home could help Petitioner with reminders to complete personal care, as well as cooking, cleaning, laundry, etc. CMH's witness pointed out that Personal Care Services in a Specialized Residential setting means personal care beyond which the home is licensed to perform. CMH's witness testified that here an AFC home is licensed to perform all the care Petitioner needs.

Petitioner's sister/guardian testified that this all began when APS and the police took Petitioner out of his home, first to the police station, and then to Beaumont Hospital. Petitioner's sister/guardian indicated that Petitioner then went to StoneCrest Center, an inpatient mental health treatment center. Petitioner's sister/guardian testified that while Petitioner was at StoneCrest, the psychologist found that Petitioner cannot care for himself or manage his daily needs. Petitioner's sister/guardian indicated that the probate court agreed with this finding and a guardian was appointed for Petitioner. Petitioner's sister/guardian testified that Petitioner's diagnosis has remained the same the entire time, he has significant health problems, and he cannot live independently or safely on his own.

Petitioner's sister/guardian testified that Petitioner also has Multiple Sclerosis (MS), which was not mentioned in the CMH assessment. Petitioner's sister/guardian indicated that Petitioner could be fine one day and be unable to dress or eat by himself the next due to the MS. Petitioner's sister/guardian testified that Petitioner keeps to himself in his room at James Street because he does not know what else to do and does not want to go back to an inpatient institution.

Petitioner's sister/guardian testified that she recently took Petitioner to the doctor and he had three MRI's which showed that he has lesions on his brain. Petitioner's sister/guardian indicated that Petitioner was just beginning to take medication for his MS. Petitioner's sister/guardian testified that Petitioner needs help, is scared, and still hears voices.

Petitioner's sister/guardian argued that APS, the psychologist at StoneCrest, the Probate Court, and Beaumont Hospital all agree that Petitioner cannot take care of himself. Petitioner's sister/guardian indicated that on top of Petitioner's physical needs, he also needs more than just prompting to complete his personal care. Petitioner's sister/guardian indicated that because Petitioner just stays in his room the staff at James Street do not see these things and have not been taking care of them. Petitioner's sister/guardian testified that the James Street staff are just doing the minimal they have to do to care for Petitioner.

Petitioner's sister/guardian testified that the information provided to CMH by Hope Network, CMH's contractor, is not true. Petitioner's sister/guardian asked if Petitioner cannot communicate what he needs, how does anyone know what he needs? Petitioner's sister/guardian pointed out that when Petitioner meets with Hope Network, he just says everything is fine because he just wants to go back to his room and not go back to the hospital.

Petitioner's sister/guardian testified that the Probate Court ordered Petitioner's house sold after he was removed from it, and now Medicaid (through the James Street Home) is charging Petitioner $6,400.00 per month, taken out of the house money. Petitioner's sister/guardian argued that Petitioner should not have to pay for his care that way.

CMH argues that Petitioner does not meet the medical necessity criteria for PC and CLS in a Specialized Residential setting because Petitioner is able to take care of his own personal care tasks and a Specialized Residential setting is not the least restrictive environment that can meet Petitioner's needs.

Having considered the parties arguments in full, it is determined that Petitioner has failed to meet his burden of proof and, therefore, the CMH properly denied the request for PC and 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 possible CLS assistance through the CMH if Petitioner is eligible.

As indicated above, PC and CLS in a Specialized Residential setting is only authorized when a beneficiary needs assistance above and beyond the assistance that can be provided in the facility where they reside. Here, while Petitioner does need significant assistance, all the assistance he needs can be provided in a less restrictive environment, namely an AFC home. According to CMH's assessment, Petitioner is independent with his self-care, but requires assistance with reminding and supervision. Petitioner is incapable of self-direction and cannot live independently. Petitioner needs physical assistance with housekeeping, food preparation, shopping, home safety, and traveling. Again, all of that assistance can be provided in an AFC home.

Furthermore, policy provides that "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. Here, an AFC home is a less restrictive environment than a Specialized Residential setting and Petitioner's needs can be met in an AFC home.

This tribunal also has no authority over the financial arrangements between Petitioner, Medicaid, and the James Street home.

With that said, the last review of Petitioner was done in February 2024 during a crisis moment in Petitioner's life. It would probably be prudent for CMH to conduct another review sooner than the usual 12 months. However, based on the evidence available to the CMH at the time of the decision, that decision was proper.

Petitioner bears the burden of proving by a preponderance of the evidence that Personal Care and Community Living Supports (CLS) in a Specialized Residential setting are a medical necessity in accordance with the Code of Federal Regulations (CFR) and Medicaid policy. Petitioner did not meet the burden to establish that such services are a medical necessity.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

CMH should consider performing another assessment of Petitioner prior to the next scheduled assessment in February 2025.

RM/sj

Robert J. Meade
Administrative Law Judge

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

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