



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.: 24-012353
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On November 6, 2024, Petitioner [REDACTED] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on November 27, 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. Petitioner's mother, [REDACTED] [REDACTED] appeared and represented Petitioner. Petitioner had two witnesses: Hana Call, Board Certified Behavior Analyst (BCBA); and Kasey Robinson, Registered Behavioral Technician (RBT). Respondent Lakeshore Regional Entity (LRE) had State Fair Hearing Officer George Motakis appear as its representative. Respondent had two witnesses: Millie Mwayi, utilization management BCBA for Network180; and Michelle Anguiano, customer services manager for LRE. Respondent also had two observers: Mehgan McNeil, associate director of utilization management and care coordination for Network180; and Francesca Sanderson, utilization management BCBA for Network180.

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

- Exhibit A Adverse benefit determination and documentation
- Exhibit B Appeal
- Exhibit C Notice of receipt of appeal
- Exhibit D Appeal denial
- Exhibit E Appeal summary report
- Exhibit F Hearing request
- Exhibit G Notice of hearing
- Exhibit H Job description for utilization management BCBA
- Exhibit I Millie Mwayi's behavior analyst credentials/license

There were no other exhibits offered into evidence.

ISSUE

Did Respondent properly deny Petitioner's request to authorize 30 hours of direct Applied Behavior Analysis (ABA) therapy with five hours of supervision per week for 12 months?

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 Medicaid beneficiary.
2. Petitioner's date of birth is January 28, 2021.
3. On July 11, 2023, Centria Autism Clinic diagnosed Petitioner with autism spectrum disorder (ASD).
4. Petitioner requested ABA therapy services from Respondent for Petitioner's autism spectrum disorder.
5. In August 2023, Positive Behavior Supports Corporation assessed Petitioner's need for services, and it recommended ABA therapy services. The assessment determined that Petitioner's Verbal Behavior Milestone Assessment and Placement Program (VB-MAPP) score was 34.
6. Respondent approved Petitioner to receive ABA therapy, and Petitioner started receiving ABA therapy in September 2023.
7. Respondent initially approved Petitioner to receive 30 hours of direct ABA therapy per week and five hours of supervision per week (plus ABA behavior identification assessment and parental training). This approval was for one year from September 19, 2023, through September 18, 2024. This approval was based in part on Petitioner's VB-MAPP score.
8. In July 2024, Positive Behavior Supports Corporation updated Petitioner's assessment, and Petitioner's VB-MAPP score increased to 111. Positive Behavior Supports Corporation noted that Petitioner demonstrated a significant increase in communication and overall instructional control. Positive Behavior Supports Corporation noted that Petitioner gained skills and milestones in all assessed areas. Positive Behavior Supports Corporation noted that Petitioner continues to have a difficult time accepting "no" to a high preferred activity or item, and toilet training has not started yet.

9. On September 12, 2024, Petitioner requested 30 hours of direct ABA therapy per week and five hours of supervision per week. Petitioner requested that Respondent approve these services for another 12 months.
10. On October 7, 2024, a BCBA with Network180 reviewed Petitioner's request for ABA therapy to determine medical necessity. The BCBA reviewed Petitioner's case, including Petitioner's progress from September 19, 2023. The BCBA looked at all documented medical information including Petitioner's individual plan of service (IPOS), Petitioner's ABA treatment plan, Petitioner's diagnosis evaluation, previous recommendations, family goals, and Petitioner's response to treatment. The BCBA determined that Petitioner had made significant progress towards his goals. The BCBA determined that Petitioner's requested level of service was not medically necessary. The BCBA recommended a lower level of service than requested.
11. On October 7, 2024, Respondent mailed a notice of adverse benefit determination to Petitioner to notify Petitioner that his request for ABA therapy was partially denied. Respondent notified Petitioner that it approved Petitioner to receive 20 hours per week of direct ABA therapy and two hours per week of supervision. This approval was for six months from September 18, 2024, through March 18, 2025.
12. On October 17, 2024, Petitioner appealed Respondent's adverse benefit determination.
13. On October 18, 2024, Respondent acknowledged receipt of Petitioner's appeal.
14. On October 18, 2024, a BCBA with Respondent reviewed Petitioner's request for ABA therapy to determine medical necessity. The BCBA reviewed Petitioner's case, including Petitioner's progress from September 19, 2023. The BCBA looked at the same information that the BCBA with Network180 looked at. The BCBA determined that Petitioner had made significant progress in most areas and had met several of his goals. The BCBA determined that Petitioner's requested level of service was not medically necessary.
15. On October 24, 2024, Respondent denied Petitioner's appeal.
16. On November 6, 2024, Petitioner requested a hearing.

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.

Community-based mental health, substance abuse, and developmental disability specialty services and supports are covered by Medicaid when delivered under the auspices of an approved Prepaid Inpatient Health Plan (PIHP). *MDHHS Medicaid Provider Manual* (October 1, 2024), Behavioral Health and Intellectual Developmental Disability Supports and Services Chapter, Section 1. Medical necessity criteria apply to mental health services. *Id.* at Section 2.5. A PIHP may deny services using medical necessity criteria when “there exists another appropriate, efficacious, less restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically necessary services.” *Id.* at Section 2.5.D. A PIHP may 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. *Id.* A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services; the PIHP must determine the need for services on an individualized basis. *Id.*

In this case, Respondent is Petitioner’s PIHP, and Respondent determined that Petitioner’s requested level of ABA therapy was not medically necessary because Petitioner had made significant progress with his goals while receiving ABA therapy. Respondent determined that only a reduced level of ABA therapy was medically necessary. Petitioner agreed with Respondent that Petitioner made significant progress with his goals while receiving ABA therapy. However, Petitioner asserted that Petitioner’s ABA therapy should continue at the same level so that Petitioner could continue to make progress towards his goals, and Petitioner asserted that Petitioner needed additional time to transition to a reduced level of ABA therapy.

Behavioral health treatment services such as ABA therapy prevent the progression of autism spectrum disorder, prolong life, and promote the physical and mental health and efficiency of the child. *Id.* at Section 18. Medical necessity and recommendation for behavioral health treatment is determined by a physician, or other licensed practitioner working within their scope of practice. *Id.* The recommended frequency should be based on the child’s age and developmental level, the presence of comorbid disorders or complex medical conditions, the severity level of the child’s autism spectrum disorder symptoms, and adaptive deficits through a person-centered, family-driven youth-guided process involving the child, family, and treating behavioral health care providers. *Id.* at Section 18.4. Behavioral health treatment services are authorized for a time period not to exceed 365 days. *Id.* at 18.6. Services may be reauthorized based on recommendation of medical necessity by a qualified licensed practitioner working within their scope of practice. *Id.*

The desired behavioral health treatment goals and outcomes should be specified at the initiation of services, monitored throughout the duration of service implementation, and refined through the behavioral service level evaluation process. *Id.* at 18.8. Transition and discharge from all behavioral health treatment services should generally involve a gradual step-down model and require careful planning. *Id.* BCBA’s or other qualified providers develop, monitor, and implement a behavioral plan of care that includes

specific targeted behaviors along with measurable, achievable, and realistic goals for improvement. *Id.* at Section 18.11. The provider is responsible for effectively evaluating the child's response to treatment and skill acquisition. *Id.* Ongoing determination of the level of service (minimally every six months) requires evidence of measurable and ongoing improvement in targeted behaviors that are demonstrated with the use of reliable and valid assessment instruments and other appropriate documentation of analysis. *Id.*

It is undisputed that Petitioner made significant progress with his goals while receiving ABA therapy. A BCBA updated Petitioner's assessment in July 2024, and Petitioner's VB-MAPP score improved from 34 to 111. Additionally, the BCBA noted that Petitioner gained skills and milestones in all assessed areas.

Petitioner did not present sufficient evidence to establish that Respondent's decision to deny Petitioner's request to authorize 30 hours of direct ABA therapy with five hours of supervision per week for 12 months was improper. Based on the evidence presented, Respondent properly reviewed Petitioner's request to authorize ABA services, Respondent properly determined that Petitioner's requested level of service was not medically necessary, and Respondent properly approved Petitioner for a reduced level of service. Therefore, Respondent's decision is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request to authorize 30 hours of direct ABA therapy with five hours of supervision per week for 12 months.

IT IS ORDERED that Respondent's decision is **AFFIRMED**.

JK/pe



Jeffrey Kemm
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

Via Electronic Mail:

DHHS Department Contacts

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