STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: January 31, 2025
MOAHR Docket No.: 24-013210
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 (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and upon a request for a hearing filed by Petitioner [redacted] (Petitioner).

After due notice, a telephone hearing was held on January 22, 2025. [redacted] Petitioner's father, appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on his own behalf. Stacy Coleman, Consultant Contractor, appeared and testified on behalf of Respondent [redacted] County Community Mental Health (Respondent).

During the hearing, Petitioner's request for hearing was admitted into the record without objection as Exhibit #1, pages 1-3. Respondent also submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-43.

ISSUE

Did Respondent properly deny Petitioner's request for a physical therapy evaluation?

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 who has been approved for services through Respondent. (Exhibit A, pages 23-43).

2. Since 2016, Petitioner's services through Respondent have included physical therapy (PT). (Testimony of Respondent's representative).

3. Petitioner has made progress in PT over the years he has been receiving it. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

4. The goals outlined as part of his PT have remained essentially the same. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

5. Petitioner's person-centered plan (PCP) for the time period December 1, 2023, to November 30, 2024, identified a goal of Petitioner improving his strength through PT. (Exhibit A, page 23, 27-28).

6. The PCP also stated as part of that goal that:

> Physical therapist to complete PT Evaluation. Treatment plan to be forwarded to [Supports Coordinator] for review. Physical therapist to provide [Petitioner] with therapy sessions, as recommended in evaluation.

Exhibit A, page 27

7. A PT evaluation was subsequently request pursuant to that PCP. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

8. On August 16, 2024, Respondent sent Petitioner a Notice of Adverse Benefit Determination stating that his request for a PT evaluation had been denied. (Exhibit A, pages 16-22).

9. With respect to the reason for that denial, the Notice of Adverse Benefit Determination stated in part:

> A request was received for 1 encounter/authorization for a Physical Therapy (PT) evaluation for the date range 08/15/2024-11/30/2024. At this time, there is not an updated annual assessment on file for the date range requested. In addition, based on a review of the documentation in the chart, the medical necessity for this request is not supported and this request has been denied.

Exhibit A, page 16

10. On August 26, 2024, Respondent sent Petitioner another Notice of Adverse Benefit Determination stating that the request for a PT evaluation had been denied on the basis that it was not medically necessary. (Exhibit A, pages 9-15).

11. On September 4, 2024, Petitioner filed an Internal Appeal with Respondent with respect to those determinations. (Exhibit A, page 3).

12. On September 19, 2024, Respondent sent written notice that Petitioner's Internal Appeal had been denied. (Exhibit A, pages 3-8).

13. In part, the Notice of Appeal Denial stated:

> A review of the record occurred. [Petitioner] has made some progress with therapy, but his goals haven't changed over the years. It seems he has reached his full potential with therapy. He could keep improving by doing exercises at home and getting support from community staff, as outlined in his current plan. Also, there isn't enough medical necessity to support the need for a physical therapy evaluation, the denial is upheld.

Exhibit A, page 3

14. On December 4, 2024, MOAHR received the request for hearing filed in this matter regarding Respondent's decision to deny a PT evaluation. (Exhibit #1, pages 1-3).

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).

Here, as discussed above, Petitioner requested a PT evaluation through Respondent. With respect to such PT evaluations and services, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

> **3.23 PHYSICAL THERAPY**
>
> | 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. | 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 their 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. 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. 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 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.

MPM, July 7, 2024 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Page 30

Moreover, while PT evaluations and services are covered services, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services. *See* 42 CFR 440.230. Regarding medical necessity, the MPM also provides:

> **2.5 MEDICAL NECESSITY CRITERIA**
>
> The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;

- Made within federal and state standards for timeliness;

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and

- Documented in the individual plan of service.

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;

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;

- 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.

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;
  - that are 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.

MPM, January 1, 2024 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 13-15

Here, as discussed above, Respondent denied Petitioner's request for a PT evaluation pursuant to the above policies and on the basis that the evaluation was not medically necessary.

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 the decision.

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

The notices of action sent in this case provide that Petitioner has plateaued in his PT and that, consequently, even another PT evaluation is unnecessary. However, that finding is unsupported by the record in this case.

For example, Petitioner's witness credibly testified that Petitioner has not plateaued and has been making progress in his PT. Moreover, both the Notice of Appeal Denial and Respondent's representative's testimony during the hearing confirmed that Petitioner has made some progress and, while Petitioner may have retained similar goals throughout his receipt of PT, the record is devoid of any documentation regarding a plateau or a lack of medical necessity for further evaluation.

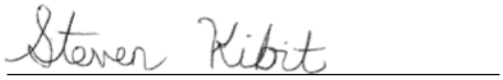
As provided in the PCP, Petitioner is only seeking a PT evaluation at this time, with any requests for PT to come if and when appropriate later; and, given the record in this case, he and his representative have demonstrated that Respondent erred in denying that limited request in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly denied Petitioner's request for a physical therapy evaluation.

IT IS THEREFORE ORDERED that:

> The Respondent's decision is **REVERSED,** and it must initiate approval of Petitioner's request for a physical therapy evaluation.



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 31st day of January 2025.

S. James
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

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[redacted]
MI [redacted]

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