Michigan Office of Administrative Hearings and Rules
P.O. BOX 30763
LANSING, MI 48909

Date Mailed: August 5, 2025
Docket No.: 25-014769
Case No.: [redacted]
Petitioner: [redacted]

[redacted]

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

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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 July 29, 2025. [redacted] Petitioner's parents, appeared and testified on Petitioner's behalf. Dorian Johnson, Due Process Manager, appeared on behalf of Respondent, Detroit Wayne Integrated Health Network (Respondent, CMH or Department).

Witnesses:

Petitioner	[redacted]
Respondent	Lucas Gogliotti
	Sara Castle

EXHIBITS

Petitioner's Exhibits: 1 – Misc Documents (Includes Contract)

Respondent's Exhibits: A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's request for in-home speech therapy, massage therapy and art therapy and err in developing Petitioner's behavioral plan?[1]

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

[1] On May 21, 2025, a telephone prehearing conference took place. During the conference, Petitioner identified issues with denials for in-home speech therapy, occupational therapy, massage therapy, art therapy, a Mental Health assessment, and non-family training. Upon commencement of the July 29, 2025, hearing, it was agreed the issue regarding occupational therapy was resolved. The issue of non-family training was further discussed; and at its heart, Petitioner identified the specific issue with non-family training was the absence of a behavioral plan in place.

1. Petitioner is a beneficiary who has been receiving services from the Department through the Children's Waiver program utilizing self-determination. (Exhibit A; Testimony).

2. On March 21, 2025, Petitioner underwent a mental health assessment. (Testimony.)

3. On March 24, 2025, a behavioral plan was created based on the March 21, 2025, mental health assessment. (Testimony.)

4. On April 4, 2025, the behavioral plan went into service and was signed by Petitioner. (Testimony.)

5. At all times relevant to this case, it was agreed, Petitioner has been approved for in-home speech therapy, massage therapy, and art therapy. (Exhibit A; Testimony.)

6. At all times relevant to this case, in-home speech therapy, and massage therapy services have been suspended due to a lack of providers. (Exhibit A; Testimony.)

7. The Department has contracts with two providers who provide art therapy. Those providers are Advanced Therapeutics and Children's Center. (Testimony.)

8. As of April 23, 2025, Advanced Therapeutics was at capacity and did not have any providers to provide services to Petitioner. (Testimony.)

9. As of May 5, 2025, Children's Center was able to provide center based art therapy to Petitioner. (Testimony.)

10. On June 2, 2025, Petitioner's guardian was contacted by email and informed of the art therapy being available at Children's Center. (Testimony.)

11. On June 2, 2025, Petitioner declined the art therapy being offered at the Children's Center. (Testimony.)

12. The Children's Center is a 36-minute drive from the Petitioner's residence. (Testimony.)

13. On April 25, 2025, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Hearing File.)

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.[2]
>
> 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.[3]

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 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 the Michigan Department of Health and Human Services to provide services under the waiver pursuant to its contract obligations with the Department.

[2] 42 CFR 430.0.
[3] 42 CFR 430.10.

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.[4]

The Department 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 *Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter*, articulates Medicaid policy for Michigan. It states in relevant part:

> **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:

[4] *42 CFR 440.230.*

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and

- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and

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

- Made within federal and state standards for timeliness; and

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

- 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; 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.

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.

Covered services include behavioral treatment and the Medicaid Provider Manual provides:

> A behavior treatment plan (BTP), where needed, is developed through the person-centered planning process that involves the beneficiary. To determine the need for a BTP, a comprehensive assessment must be completed in order to rule out any physical or environmental cause for the behavior.

With regard to specialty services under the children's waiver, the Medicaid Provider Manual indicates:

> **14.3.K SPECIALTY SERVICES**
>
> Specialty Services include:

- Music Therapies;
- Recreation Therapies;

- Art Therapies; and
- Massage Therapies.

Specialty Services may include the following activities: Child and family training; coaching and supervision of staff; monitoring of progress related to goals and objectives; and recommending changes in the plan. This may be used in addition to the traditional professional therapy model include in Medicaid.

Services must be directly related to an identified goal in the individual plan of service and approved by the physician. Service providers must meet the CMHSP provider qualifications, including appropriate licensure/certification. Services limited to four sessions per therapy per month.

The CMHSP must maintain a record of all Specialty Service costs for audit purposes.

Hourly care services are not covered under Specialty Services.

Eligibility for home-based services for children age 6 through 20 is found in Section 7.2.C of the MPM and provides the following:

Decisions regarding whether a child or adolescent has a serious emotional disturbance and is need of home-based services is determined by using the following dimensions: the child has a diagnosable behavioral or emotional disorder, substantial functional impairment/limitation of major life activities, and duration of the condition. For children age 6 through 20 (day prior to 21), the MichiCANS is used to make determinations within the functional impairment dimension. All of the dimensions, as well as family voice and choice, must be considered when determining if a child is eligible for home-based services.[5]

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

> An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or

[5] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, January 1, 2025, pp 13-14, 18, 66, 119.

has experienced a failure of the agency to take into account the recipient's choice of service.

In this case, Petitioner identified several reasons for requesting a hearing. Those reasons being the following:

1. Denial of in-home speech therapy
2. Denial of occupational therapy
3. Denial of massage therapy
4. Denial of art therapy
5. Denial of a mental health assessment
6. No Behavioral Plan being in place

Upon commencement of the hearing, it was indicated that the issue regarding a denial for occupational therapy was resolved and was no longer an issue in dispute. It was further indicated that the mental health assessment issue was now moot as well.

In regard to the in-home speech therapy and massage therapy, both parties agreed the services were approved but they currently were not being provided as a result of lack of providers. This essentially amounts to a suspension of services. The lack of Providers is not a reason to suspend services; and consequently, the Departments actions will be reversed, and the Department will be ordered to provide in-home speech therapy and massage therapy.

Regarding the Behavioral Plan or lack thereof, the Petitioner has failed to meet their burden. The record provided indicates that more likely than not that a behavioral plan was in place to address Petitioner's needs - one that was based on a psychological assessment and one that was agreed to by Petitioner's guardian.

That leaves us with the issue of art therapy. The Department argued that services were approved, and that it is Petitioner that is refusing the services being offered by the Provider Children's Center.

Petitioner's arguments in response were not very convincing as some of the arguments presented by Petitioner were contradictory. At first, Petitioner's guardian argued they had never refused services. But after the Department identified a June 25, 2025, email, where the Petitioner's Guardian declined services, Petitioner then acknowledged refusing services but made an alternative argument as to why she denied those services on that particular day.

Petitioner also argued the need for the Department to provide at least two Providers to choose from to provide the art therapy services that were approved; and that in this case, that was not done. This, however, is not necessarily true. In this case, the

Department did have two Providers that were contracted with to provide the requested services. One of those Providers, however, was at capacity; while the second Provider was willing and able to provide the services in question. Petitioner could have probably been placed on a wait-list for services, but this delay would have been of their own choosing though and not the fault of the Department when there was a contracted Provider that was willing and able to provide the requested services. Consequently, I find evidence to affirm the Department's actions in regard to the art therapy as it was the Petitioner who declined the available services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's actions are affirmed in part and reversed in part.

IT IS THEREFORE ORDERED that:

The Department's decision regarding art therapy is **AFFIRMED**.

The Department's decision regarding the Behavioral Plan is **AFFIRMED**.

The Department's suspension of services regarding in-home speech therapy and massage therapy is **REVERSED**.

The Department is ordered to find a Provider to provide the approved in-home speech therapy and massage therapy.

COREY A. ARENDT
ADMINISTRATIVE LAW JUDGE

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at https://lrs.michbar.org or Michigan Legal Help at https://michiganlegalhelp.org. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
  Michigan Office of Administrative Hearings and Rules
  Rehearing/Reconsideration Request
  P.O. Box 30639
  Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

Via First Class and Electronic Mail:

Petitioner

[redacted]

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