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

Date Mailed: August 18, 2025
Docket No.: 25-024971
Case No.: [redacted]
Petitioner: [redacted]

[redacted]

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

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这是一份重要的法律文件。请让别人翻译文件。

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

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Docket No.: 25-024971
Case No.: [redacted]
Petitioner: [redacted]

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 on behalf of Petitioner [redacted] (Petitioner).

After due notice, a telephone hearing was held on August 13, 2025. [redacted], Petitioner's mother/legal guardian, appeared and testified on Petitioner's behalf. [redacted] appeared as a witness for Petitioner. Evan George, Fair Hearings Officer, appeared on behalf of Respondent, Washtenaw County Mental Health (Department). Timothy Knapp appeared as a witness for Department.

Exhibits:

Petitioner: 1. Behavioral Treatment Plan February 2, 2023

Department A. Hearing Summary
B. Notice of Adverse Benefit Determination
C. Notice of Appeal Denial
D. Notes from health record
E. Behavioral Psychology Assessment
F. Behavior Treatment Plan
G. CMHPSM Behavior Treatment Review Committee Policy
H. MDHHS Medicaid Provider Manual

ISSUE

Did Department properly terminate Petitioner's Treatment Plan?

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 April 23, 2025, Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated Petitioners' services for mental health service plan development would be terminated effective May 4, 2025, due

to Petitioner not participating/refusing to participate in treatment activities, and due to not signing the behavior treatment plan. (Exhibit B; Testimony.)

2. On June 16, 2025, Department sent Petitioner a letter of Appeal Denial. The notice upheld the prior determination to terminate services. In regard to the notice, the notice provided the following:

> Under CMHPSM policy, WCCMH staff must obtain consent to receive a service form an individual or their guardian. The Behavior Treatment Committee Policy states on page 7 that "special consent must be given … prior to the implementation of a behavior plan."
>
> …
>
> WCCMH Psychologist Amanda Espinoza conducted an evaluation to formulate Christopher's behavior plan on 9/12/24. Ms. Espinoza documented a phone call with you on 10/24/24 where you suggested CMH encourage [redacted] to comply with his medication regimen using techniques that she found inappropriate and outside of her scope of practice.
>
> Going back to at least December of 2024, Ms. Espinoza attempted to provide you with an in-service on [redacted] behavior plan on at least five separate occasions. When the in-service was eventually completed on 3/25/25, Ms. Espinoza requested your signature and consent to implement the plan. Ms. Espinoza noted on 4/28/25 that you communicated to her you did not feel good about the behavior/treatment plan due to its focus on the clinical team rather than his behaviors towards others in his family and community.
>
> Your verbal statement to the appeals committee reiterated your concern over the behavior plan being too focused on behaviors around staff rather than the community. You reported that you began communicating this concern on or around 4/30/25. The Notice of Adverse Benefit Determination (ABD) communicating the behavioral psychology services would be terminated was issued a week prior, on 4/23/25.
>
> …

> More importantly, WCCMH cannot provide behavioral psychology services without consent from the individual or their guardian to receive them. Despite months of attempts at completing the in-service training (where the plan would have been reviewed and discussed) and attempts at obtaining written consent for the plan, consent still has not been provided.
>
> Even if behavioral psychology services could be provided without consent, such services are only effective when properly understood and implemented by primary caregivers and staff. Without participating in the treatment activities as recommended by the Psychologist, the services are ineffective and no longer meet medical necessity criteria as defined by the Medicaid Provider Manual.[1]

3. On July 8, 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 (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.[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

[1] Exhibit C, pp 1-2.
[2] 42 CFR 430.0.

> 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…[4]

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 has been denied Behavioral Treatment Plan.

With respect to such services specifically, and services in general, the applicable version of the Medicaid Provider Manual (MPM) states in part:

> **3.4 BEHAVIOR TREATMENT REVIEW**
>
> The federal Balanced Budget Act of 1997 requires states to ensure that enrollees in their PIHPs will "be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in other Federal regulations on the use of restraints or seclusion" [42 CFR 438.100 (b)(2)(v)].
>
> 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

[3] 42 CFR 430.10.
[4] 42 USC 1396n(b).

BTP, a comprehensive assessment must be completed in order to rule out any physical or environmental cause for the behavior. Any BTP that includes limitations of the beneficiary's rights, any intrusive behavior treatment techniques, or any use of psychoactive drugs for behavior control purposes, must be reviewed and approved by a Behavior Treatment Plan Review Committee (BTPRC) comprised of at least three individuals, one of whom shall be a board-certified behavioral analyst or licensed behavior analyst and/or fully-or limited-licensed psychologist with the specified training, and one of whom shall be a licensed physician/ psychiatrist. A representative of the Office of Recipient Rights (ORR) shall participate on the BTPRC as ex-officio, non-voting member in order to provide consultation and technical assistance to the Committee. Other non-voting members may be added at the BTPR's discretion and with the consent of the individual whose behavior treatment plan is being reviewed, such as an advocate or Certified Peer Support Specialist…

The required BTPRC members must be present during the review and approval process. A BTPRC member who has prepared a BTP for a specific beneficiary must recuse themselves from the final decision-making of that individual. Any BTP submitted for review and approval (or disapproval) must be done in light of current research and prevailing standards of practice as found in current peer-reviewed psychological/psychiatric literature. Any intrusive or restrictive technique not supported in current peer-reviewed psychological/psychiatric literature must be reviewed and approved by MDHHS prior to implementing. BTPs that propose the use of physical management and/or involvement of law enforcement in a non-emergent situation, aversive techniques, or seclusion or restraint in a setting where it is prohibited by law shall be disapproved by the BTPRC. Acceptable BTPs are designed to reduce maladaptive behaviors, to maximize behavioral self-control, or to restore normalized psychological functioning, reality orientation, and emotional adjustment, thus enabling the beneficiary to function more appropriately in interpersonal and social relationships. Such reviews shall be completed prior to the beneficiary's signing and implementation of the BTP and as expeditiously as possible. Staff implementing the beneficiary's BTP must be trained in how to implement the BTP. This coverage includes the monitoring of the BTP

by the BTPRC or a designee of the committee which shall occur as indicated in the BTP.[5]

* * *

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.

[5] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, July 1, 2025, pp 17-18.

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.[6]

* * *

Here, as discussed above, Department had terminated Petitioner's Behavioral Health Plan following Petitioners failure to provide consent to the plan developed by the Department and the Department's psychologist; and further the Department's refusal to include methodologies limiting Petitioner's rights by using aversive techniques.

In appealing the decision, the Petitioner bears the burden of proof and, thus, must show that the Department's actions were not in conformity with the applicable laws and policies.

Petitioner believes that the actions of the Department are personal and that all that is wanted is for Petitioner to receive the proper services. Petitioner articulated that there has been issues with the Department for years, and that they are not happy with the current plan. Petitioner believed that the prior worker was more engaged, and that Petitioner would benefit from a behavior plan. Petitioner also believes that the notes provided do not show a true picture of what has transpired.

It does not appear that there is a dispute as to whether Petitioner would benefit from a Behavioral Health Plan. But what is in dispute is the plan itself. Petitioner has not shown how the plan that was offered was insufficient and never addressed the issues raised by the Department in regard to the proposed plan being in appropriate and not permitted. Furthermore, even if the notes were not all provided, the notes that were provided clearly show that Petitioner has avoided the Department and failed multiple times to provide consent.

Accordingly, I find sufficient evidence was presented to affirm the Department's actions in this matter. Petitioner can always make a new request for a Behavioral Plan.

DECISION AND ORDER

[6] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, July 1, 2025, pp 14-15.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department properly terminated Petitioner's services.

IT IS THEREFORE ORDERED that:

Department's decision is **AFFIRMED**.

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 Electronic Mail:

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