

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON HEALTH AUTHORITY

IN THE MATTER OF) PROPOSED AND FINAL ORDER
)
)
[REDACTED] Claimant) [REDACTED]
)
and)
)
HEALTH SYSTEMS DIVISION)

HISTORY OF THE CASE

On October 17, 2017, the Oregon Health Authority's Health Systems Division (Authority) notified claimant that it had denied a request to authorize payment for continued housing in a secured residential treatment facility (SRTF). On November 6, 2017, the Authority received a request for hearing from claimant challenging the denial. On November 8, 2017, the Authority referred claimant's hearing request to the Office of Administrative Hearings (OAH). On December 13, 2017, the Authority issued an Amended Notice of Denial further clarifying its reason for denial of the request.

On January 2, 2018, Administrative Law Judge (ALJ) Matthew C. Wymer convened a telephone hearing. [REDACTED] claimant's mother, represented claimant. Claimant's father [REDACTED] QMHP, administrator for [REDACTED] the SRFT where claimant resides, appeared on claimant's behalf, but did not testify. Claimant appeared and testified. [REDACTED] represented the Authority and testified. [REDACTED] LPC, an employee of Keystone Peer Review Organization (KEPRO), appeared and testified on behalf of the Authority. [REDACTED] QMHP, an employee of KEPRO, and Chad Scott, QMHP, an employee of the Authority, appeared on behalf of the Authority but did not testify.

The hearing continued on January 8, 2018. Claimant was not present at the reconvened hearing due to illness. [REDACTED] and Chad Scott appeared and testified on behalf of the Authority. [REDACTED] appeared and testified on behalf of claimant. The hearing continued on January 17, 2018. Claimant appeared and completed his testimony. [REDACTED] appeared and testified. The record closed at the end of the hearing.

ISSUE

Whether the Authority must authorize payment for continued housing in a SRTF. Oregon Administrative Rules (OAR) former 410-120-0000(139); 410-172-0630(1), (2)(b)-(d); 410-172-0720(1), (2), (5), (6)(a)-(c), (7), (10), (11).

[REDACTED]

CONCLUSION OF LAW

The Authority may not deny authorization of payment for continued housing in a secured residential treatment facility based on the notices issued on October 17, 2017 and December 13, 2017.

OPINION

The sole issue for determination is whether the Authority is required to authorize payment for continued housing in a secured residential treatment facility. ORS 183.450(2) states: "The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." See also *Harris v. SAIF*, 292 Or 683, 690 (1982) (holding that, as a general rule, the burden of proof is on the proponent of the fact or position). Thus, it is claimant's burden to produce reliable, substantial, and probative evidence in support of the position that the Authority is required to authorize payment for continued housing in a secured residential treatment facility.

In the absence of legislation specifying another standard, the standard of proof in an administrative hearing is preponderance of the evidence. *Metcalf v. AFSD*, 65 Or App 761, 765 (1983). Preponderance of the evidence means evidence sufficient to persuade the fact finder that the facts asserted are more probably true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

In its notices, the Authority cited to OAR 410-172-0720 and OAR 410-172-0630, specifically to OARs 410-172-0630(1), (2)(b)-(d) and 410-172-0720(1), (2), (5), (6)(a)-(c), (7), (10), (11). See *Exhibit A5*. One of the Authority's witnesses, Mr. Scott, testified to the criteria used in civil commitments; however, that criteria has not been presented either in the notices to claimant's guardian or offered into evidence at hearing. Other than those administrative rules, the Authority has not provided evidence of any other criteria that it relied upon in making its determination. Therefore, I base my decision on the documents admitted into the record and the testimonies of the parties. To the extent KEPRO and the Authority relied on outside criteria to make their decision, I do not rely on those criteria because they were not included in the record, nor even offered for admission into evidence.

Under OAR 410-172-0720(5), the Authority "shall authorize * * * continued stay in residential programs based on the medical appropriateness of the request and supporting clinical documentation." OAR 410-172-0630 defines "medically appropriate" in the area of behavioral health services and states in relevant part:

(1) In addition to the definition of medically appropriate in OAR 410-120-0000² for behavioral health services, "medically appropriate" means the services

² Former OAR 410-120-0000(139) defines "medically appropriate" as:

[S]ervices and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions or injuries and that are:



and supports required to diagnose, stabilize, care for, and treat a behavioral health condition.

(2) The [Authority] shall make payment for medically appropriate behavioral health services when the services or supports are:

(b) Based on the standards of evidence-based practice, and the services provided are appropriate and consistent with the diagnosis identified in the behavioral health assessment[.]

The Authority's notices simply state that the "[d]ocumentation demonstrates claimant is sufficiently stabilized and/or has developed the skills necessary to support transition to a less restrictive level of care," and that the clinical documentation does not support continued stay at claimant's current level of care. *See Exhibit A5 at 1.*

I disagree. To the extent that the documentation submitted with the request and the KEPRO PCP may be considered as "clinical documentation," the preponderance of the evidence is that the documentation does not support the Authority's decision.

It appears the Authority based its decision to deny the request on the documentation submitted with the prior authorization request and the PCP completed by [REDACTED] after interviewing claimant and [REDACTED]. [REDACTED] is a Qualified Mental Health Professional and is intimately acquainted with claimant's mental health issues. As such, she is most qualified to assess claimant's mental health status, including the possibility of transitioning him to a RTF with a lower level of security. On March 22, 2017, [REDACTED] completed a Comprehensive Mental Health Assessment (CMHA). On March 27, 2017, she completed a Residential Service Assessment. On September 27, 2017, she evaluated claimant, using the Level of Care Utilization System (LOCUS) assessment tool and completed a service plan for claimant. Each of those evaluations goes into much detail on claimant's condition, noting his history of suicide attempts. The common theme that emerges from those various evaluations is that, while the intent is to move claimant to a less restrictive housing situation in the future, claimant's current condition and history of suicide attempts and substance abuse mean that he needs the structured, secure environment provided by a SRTF. I also note that Judge Tennyson's limited judgement, which found that claimant was a danger to himself and others and required 24-hour supervised care, has not been rescinded or amended, and, by all appearances, remains in force.

On the other hand, the PCP prepared by KEPRO is much less detailed and includes subjective answers from claimant. The answers elicited from [REDACTED] likewise appear to contain much less detail. Even in [REDACTED] answers on the KEPRO PCP, while she "thinks

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- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
 - (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine, and professional standards of care as effective;
 - (c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and
 - (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to [an Authority] client or CCO member in the Division or CCO's judgment.

[REDACTED]

that [claimant] is ready to transition to a lower level of care," [REDACTED] still expresses concern about making such a change "at this time of year because of [claimant's] history."

I do not rule that claimant has qualified for continued residence at the SRTF; however, the preponderance of the evidence in the record does not support the Authority's decision to deny the request. The Authority's decision to deny the request for continued stay at the SRTF must be disaffirmed.

ORDER

The October 17, 2017 and December 13, 2017 decisions denying authorization of payment for continued housing in a secured residential treatment facility are DISAFFIRMED.

Matthew C. Wymer
Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you may:

FILE EXCEPTIONS. You have the right to file written exceptions or present argument to be considered by the Administrator in issuing the Final Order. Your exceptions must be received by the 10th workday from the date of mailing of this order. OAR 410-120-1860(9). Send them to:

Administrator
Oregon Health Authority
Health Systems Division
3rd Floor, Suite E49
500 Summer Street NE
Salem, OR 97301

If you do not file any timely written exceptions to this Proposed Order, it will become the Final Order at the close of business on the 10th workday from the date of mailing. If you do file timely written exceptions to the Proposed Order, the Authority may consider your written exceptions in issuing a Final Order. The Authority may also disagree with the Proposed Order and file its own written exceptions, in which case, the Authority will issue an Amended Proposed Order. If the Authority issues a Final Order, it will provide you with an explanation of the Appeal Procedure in the Final Order.

If the Proposed Order becomes a Final Order by operation of law at the close of business on the 10th day after mailing of the Proposed Order and you are not satisfied with the Final Order, you may:

