

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-19272CMH

Case No. ██████████
██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, Appellant's ██████████, appeared on behalf of the Appellant. ██████████) represented the Department's agent ██████████. ██████████ testified as a witness for Appellant.

ISSUE

Did the CMH properly determine the Appellant's eligibility for Community Living Supports?

FINDINGS OF FACT

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

1. Appellant is a ██████████-old Medicaid beneficiary who lives with his parents.

2. Appellant was enrolled in the Children's Waiver Program through the State of Michigan at all times relevant to this matter; and he has been receiving Medicaid-covered Specialty Mental Health Services and Supports of Targeted Case Management, Respite, Occupational Therapy, Speech and Language Therapy, Behavior Services, and Community Living Supports (CLS).
3. Appellant was diagnosed with Pervasive Developmental Disorder (PDD).
4. According to a Psychology Behavior Plan, Appellant requires monitoring due to physical aggression, self-injurious behaviors, eloping, temper tantrums in the community, and behaviors resulting from sensory modulation problems such as difficulty with transitions and over stimulation.
5. On ██████████ received Appellant's request for 5 hours per day of CLS for Appellant.
6. On ██████████ sent Appellant an adequate notice, stating that he was approved for 4.5 hours per day of CLS, and there was no medical necessity for 5 hours of CLS per day. (Exhibit 1, p. 28)
7. According to Appellant's Addendum To The Individual Plan Of Service, dated ██████████, Appellant's mother would like Appellant to be able to adjust better to going out in the community; and the goal was to: "Increase Community Integration." (Exhibit 1, p. 53)
8. On ██████████ received Appellant's request for 5 hours per day of CLS for Appellant.
9. On ██████████ sent Appellant an adequate notice, stating that he was approved for 4.5 hours per day of CLS, and there was no medical necessity for 5 hours of CLS per day. (Exhibit 1, p. 57)
10. On ██████████, the State Office of Administrative Hearings and Rules received a request for an Administrative Hearing, protesting the denial of .5 hours of CLS per day, signed by the Appellant's mother.

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.

42 CFR 430.0

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...

Section 1915(c) of the Social Security Act provides:

The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded...

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 Community Health (MDCH) operates a section 1915(b)

Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) CWP. CMH contracts with the Michigan Department of Community Health to provide services under the CWP.

Section 14

The Children's Home and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP...

The Children's Waiver is a fee-for-service program administered by the CMHSP. CMHSP is financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by CMH and exceed the Medicaid fee screens or amount, duration and scope parameters...

Section 14.1

The CWP enables Medicaid to fund necessary home and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

Section 14.3

Community Living Supports (CLS) provides assistance to a family in the care of their child while facilitating the child's independence and integration into the community. This service provides skill development related to activities of daily living, such as bathing, eating, dressing, personal hygiene, household chores and safety skills; skill development to achieve or maintain mobility, sensory-motor, communication, socialization and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the child. The supports, as identified in the individual plan of services, are provided in the child's home and may be provided in community settings when integration into the community is an identified goal. These supports may serve to reinforce skills or lessons taught in school, therapy or other settings, but are not intended to supplant services provided in school or other settings.

Individuals who are identified in the individual plan of services to provide CLS to the child and family must meet provider qualifications.

The CMHSP must maintain the following documentation:

- A log of the CLS must be maintained in the child's record, documenting the provision of activities outlined in the plan.
- Provider qualifications and standards must be maintained for all staff providing services and supports to the child and family.

All service costs must be maintained in the child's file for audit purposes.

Medicaid Provider Manual (MPM), Mental Health and Substance Abuse Services, Section 14, 14.1, & 14.3, April 1, 2009.

The issue in this case is Appellant's appeal of the denial of 5 hours per day of CLS. GCCMH determined that Appellant was in need of 4.5 hours of CLS on a daily basis. Appellant's mother stated that Appellant is a very high need child and the extra .5 hours of CLS is greatly needed. Appellant's mother stated further that the additional CLS is needed because her respite hours were cut; and her son needs the CLS for outings for social and behavioral encouragement.

The Department's Children's Waiver Hourly Care Appendix addresses decision-making for determining the amount of CLS hourly care. In pertinent part:

1.1 PURPOSE

This Section is to help the CMHSP determine whether the challenging behavioral needs of the child support hourly care and other support services, and to determine the appropriate range of hourly care that can be authorized under the Community Living Support (CLS) waiver service. The following categories do not, in and of themselves, establish eligibility for publicly funded hourly care.

The amount of CLS services (i.e., the number of hours) that can be authorized for a child is based on several factors, including the child's care needs which establish waiver eligibility, child's and family's circumstances, and other resources for daily care (e.g., private health insurance, trusts bequests, private pay). In addition to identifying the family situation and the specific behaviors as described in the category definitions, the following elements contribute to the overall assessment of need:

- Type of behaviors identified;
- Frequency, intensity, and duration of identified behaviors;
- How recently serious behaviors occurred;
- Actual specific effects of the behavior on persons in family and property;
- Level of family intervention required to prevent behavioral episodes;
- Extent to which family must alter normal routine to address behavioral needs of the child;

- Prognosis for change in the child's behavior;
- Whether or not child functions more effectively in any current setting than in other settings; and
- Age, size, and mobility of child.

Mental Health-Substance Abuse Chapter April 2009 Children's Waiver Hourly Home Care Appendix, page A1

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 CFR 440.230. The Appellant had the burden of proving by a preponderance of the evidence that he meets the eligibility criteria for 5 hours of CLS per day, instead of the 4.5 hours of CLS per day that were authorized. In this case, Appellant did not meet his burden of proof. There is no evidence on the record to establish that the amount of CLS that was authorized by [REDACTED] is insufficient to achieve the goal and objectives listed in Appellant's Personal Care Plan. Therefore, the CLS eligibility determination must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly determined Appellant's eligibility for CLS.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

[REDACTED]
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[REDACTED]
Date Mailed: 7/15/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.