STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant

_____/

Docket No. 2011-38938 CMH
Case No. [redacted]

DECISION AND ORDER

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

After due notice, a hearing was held [redacted], the Appellant's father, served as his hearing representative. The Appellant was not present. [redacted], part time care provider for the Appellant, was present and testified.

[redacted], attorney for [redacted] Community Mental Health, represented the PIHP. Witnesses for the CMH included [redacted], DD Program Coordinator; [redacted], Team Supervisor for DD Supports Coordinators; [redacted], Deputy Director for CMH; [redacted], Mental Health Program Supervisor and Fair Hearing Officer; [redacted], Supports Coordinator for the Appellant and [redacted] was present.

The evidentiary record was left open until [redacted], to allow submission of closing statements.

ISSUE

Did the CMH properly propose a reduction in the Appellant's authorization for community living supports hours?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary receiving services through [redacted] Community Mental Health (CMH).

2. The Appellant is a [redacted] year old male and qualifies for services provided through the CMH as a person with developmental disability.

3. CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

4. The Appellant is diagnosed with autism and downs syndrome.

5. The Appellant has historically lived with his father in the family home.

6. The Appellant owns his own home. He is in the process of transitioning to residing there full time.

7. The Appellant has had a goal of transitioning to independent living in his own home since at least [redacted]. Following the PCP development in [redacted], he has been approved for community living support services through CMH in the amount of 30 hours per week to address the aforementioned goal.

8. At the [redacted] PCP meeting, agreement about the amount of CLS authorized to address the goal of independent living was discussed as a temporary authorization with intent to reduce the authorization over time as skills were acquired. (Testimony of [redacted], Supports Coordinator)

9. The Appellant also participates in the Ready for Life program through [redacted].

10. Following a review and case planning meeting, CMH sought to reduce the number of CLS hours authorized to address the Appellant's goal of residing in the community independently from 30 per week to 17 per week. Concurrently, the CMH proposed to increase staff hours for the purpose of addressing his goal of continuing to participate in the Ready for Life program. The proposed effective date for the reduction to CLS hours was [redacted].

11. Following the Notice of reduction sent by the CMH, the Michigan Administrative Hearing System received Appellant's request for hearing on [redacted].

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*

> 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…

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

under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate amount, scope, and duration to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.*

The federal Code of Federal Regulations, the state Mental Health Code, and Michigan Medicaid policy mandate that appropriate amount, scope and duration is to be determined through the person-centered planning process. It is indisputable that the federal regulations, state law, and policy, require the cooperation of both the Community Mental Health and the Medicaid beneficiary in the person-centered planning process. The CMH and the Medicaid beneficiary are bound by the Code of Federal Regulations, the state Mental Health Code, and state Medicaid policy. As such, both parties must cooperate in the development of a person-centered plan before Medicaid services can be authorized.

> MCL 330.1712 Individualized written plan of services.
>
> (1) The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release. The individual plan of services shall consist of a treatment plan, a support plan, or both. A treatment plan shall establish meaningful and measurable goals with the recipient. The individual plan of services shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation. The plan shall be kept current and shall be modified when indicated. The individual in charge of implementing the plan of services shall be designated in the plan.
>
> (2) If a recipient is not satisfied with his or his individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days and shall be

> carried out in a manner approved by the appropriate governing body.
>
> (3) An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process. Justification for an individual's exclusion shall be documented in the case record.

The CMH must follow the Department's Medicaid Provider Manual when approving mental health services to an applicant, and the CMH must apply the medical necessity criteria found within the Medicaid Provider Manual.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5* lists the criteria the CMH must apply. The Medicaid Provider Manual sets out the eligibility requirements as:

> **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; 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.
>
> *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Section, January 1, 2011, page 13.*

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.

The Medicaid Provider Manual specifies what supports and services are available for persons such as the Appellant. It states in pertinent part:

> **SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3S)**
> PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning.
>
> **17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES**
> The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that

are typical in his community; and without such services and supports, would be impossible to attain. (emphasis added by ALJ)

Community Inclusion and Participation
The individual uses community services and participates in community activities in the same manner as the typical community citizen. Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.) activities. A beneficiary's use of, and participation in, community activities are expected to be integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with mental retardation) (emphasis added by A LJ)

Independence "Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent of such freedom for him/herself during person-centered planning. For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently. (emphasis added by ALJ)

Productivity Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness. For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity may be successful participation in home, pre-school, or child care activities. Children under 18 would

> be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses. (emphasis added by ALJ)

The CMH determined that the Appellant does meet medical necessity to receive CLS services provided through the CMH. The *Medicaid Provider Manual, Mental Health/Substance Abuse S*ection articulates Medicaid policy for Michigan, specifically including CLS.

> **17.3.B. COMMUNITY LIVING SUPPORTS**
>
> Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.). (emphasis added by ALJ)
>
> **Coverage includes:**
>
> - **Assisting**, reminding, observing, guiding and/or training in the following activities:
>
> - meal preparation
> - laundry
> - routine, seasonal, and heavy household care and maintenance
> - activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
> - shopping for food and other necessities of daily living
>
> CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance is needed, the beneficiary, with the help of the PIHP case manager or supports coordinator must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may

be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. The PIHP case manager or supports coordinator must assist, if necessary, the beneficiary in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization amount, scope and duration of Home Help does not accurately reflect the beneficiary's needs based on findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:
  - money management
  - non-medical care (not requiring nurse or physician intervention)
  - socialization and relationship building
  - transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
  - participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
  - attendance at medical appointments
  - acquiring or procuring goods, other than those listed under shopping, and nonmedical services

- Reminding, observing and/or monitoring of medication administration

- Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state plan Personal Care services. Transportation to medical appointments is covered by Medicaid through DHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the

> beneficiary receiving community living supports. (Underline emphasis added by ALJ) (emphasis added by ALJ)
>
> *MPM, Mental Health and Substance Abuse Section, December 1, 2010, Page 100.*

In this case the CMH presented the position that CLS has been authorized in an appropriate amount, scope and duration to reasonably achieve the goals and needs of the Appellant as set forth in the PCP. The goals included in the PCP are to live independently in the community, to participate in meaningful daily activities in his community and for his father to have a break from time to time from the Appellant's care needs. Each of the aforementioned goals is addressed through several objectives in the PCP. Whether the objective is active or not is identified and the service or services identified as necessary to meet the goals follows the list of objectives. The CLS authorization request is broken into areas that are related to the goals and objectives identified in the PCP, however, not explicitly organized in the exact same fashion. In other words, a goal or objective can be identified on the PCP without an identical corresponding support area identified on the CLS authorization request. Nonetheless, this ALJ has used these documents, as well as the other evidence of record to assess whether the 17 hours of CLS is adequate to provide supports appropriate in amount, scope and duration to reasonably achieve the goals as stated in the PCP.

DISCUSSION:

The Appellant's goal of living in the community (rather than with his father) encompasses several aspects, from health and safety both inside and outside of the home, to socialization and relationship building. Activities of daily living, instrumental activities of daily living, medical considerations and money management also must be addressed.

In order to reside in the community, the Appellant must not only be safe in his home, he must be safe outside his home as well. This is addressed in the objective which includes the comments that, "the Appellant likes to be in the community on a daily basis and accomplishes this by taking the dog for a walk and walking to different activities he is involved with. Pedestrian safety skills are practiced daily." This plan does not identify how long it is safe for the Appellant to be in the community unaccompanied, if at all. There is disagreement among the parties about whether and for how long the Appellant could be in the community unaccompanied. There is no disagreement that he can repeat activities he has already engaged in. He could not determine he wants to participate in something and do it without having been accompanied first. Thus, in order for him to participate in community activities, the activity must be first identified, then planned and then supported either with a natural support or staff assistance. In order to engage in it alone (eventually) it must either be accessible by foot or via specialized public transportation which is known to be limited to activities concluded prior to 6:00 pm. These narrow constraints are unnatural and have been shown to lack the flexibility the CMH asserts is actually present. At hearing, it was asserted there is sufficient

flexibility present in the system to address desires to participate in the community, with planning. It was then stated: as long as it is addressed in the PCP. The Appellant's father testified credibly that he had requested his son be able to participate in blueberry picking over the summertime. This would have involved going into the community in an unfamiliar setting. He requested transportation to the field be provided and some initial training and supervision of the Appellant, possibly for as little as an hour, then transportation back. He was denied supports for this request but not in writing. This ALJ finds this example does illustrate an inadequate amount and scope of support is available to the Appellant to reasonably achieve the goal of living independently in the community setting. Having opportunity for meaningful participation in community settings for a person of his ability should not be unnaturally constrained to activities he can walk to, has already participated in, are concluded prior to 6 pm or driven to by his father. He is only [redacted] years old. It is commendable that the Appellant and his family have achieved a large measure of success in familiarizing the Appellant with a routine such that he can access certain activities both on foot and via special transportation, if he has already been accompanied. However, without even the ability to add or try a seasonal activity such as blueberry picking, his participation in the community is shown to be very limited already. His experiences in the community should not be defined by what he was able to learn to do within 90 days of moving out of his father's home and into his own. There is evidence that strong natural supports are in place and extensively used and relied on. His paid staff person also resides with him as his roommate. While it is true the Appellant is participating in a program at a college which provides him opportunity to be out of the house and build relationships, he also needs to be able to foster the growth of the relationships and seek out new opportunities. The success of training in the basics of how to survive in his own home may have been largely achieved through training, however, basics are not all that is required according to the Medicaid Provider Manual.

The evidence of record establishes he does have a roommate and some general safety awareness. Because the Appellant is diagnosed with both downs syndrome and autism, he lacks insight into the consequences of decisions he makes; although he can perform well in tasks he has been trained for. He is not left alone for any appreciable length of time, possibly up to 30 minutes at a time. He has very limited, narrowly proscribed access to the community without being accompanied by another person. He does have issues accessing the community broadly without being accompanied by another person. He is able to access some public transportation to engage in an activity he has already done repeatedly with training, however, the public transportation is specialized and limited. It ends at 6:00 pm. It is not known if it is available at all on Sunday. It is known he cannot use it to attend his church, this means he must rely on natural supports to participate in all of his church related community outings and actual church attendance. An important aspect of living in the community is having access to the community. He should not be confined to activities he can walk to or which end prior to 6 pm and are available via specialized bus.

ACTIVITIES OF DAILY LIVING AND INSTRUMETNAL ACTIVITIES OF DAILY LIVING:

The Appellant performs his activities of daily living independently with verbal prompts. He can perform many of his instrumental activities of daily living with training and verbal prompts. He is being trained to make meals and must have supervision and guidance when doing so. The CMH presented testimony that the Appellant is able to make his own breakfast according to his roommate and staff person, [redacted]. CMH also provided testimony that the Appellant has lunch during his day program at Hope College, therefore only requires assistance with dinner preparation. He has 3.25 hours per week authorized for meal preparation/training. This is 15 minutes per dinner and zero time for any other meal. This authorization is intended to include all cutting, chopping, meal preparation and clean up following the meal. It was reduced from its former level of 7 hours per week, which was to include training in meal preparation. The objective specified he would learn to make 4 meals independently. This new, current authorization was derived from use of a standardized authorization process developed using objective standards according to CMH witness [redacted]. Testimony establishes it was determined that objective standards were deemed necessary when establishing the level of CLS that could be equitably distributed to the client base. The results of the American Time Use Survey were used as a tool in development of the standards. The standards developed took into consideration the clientele would not have the same time use as the average American who participated in the American Time Use Survey. The CMH put evidence into the record that using the objective measures resulted in an authorization for meal preparation of 3.25 hours per week. This is a reduction from 7 hours per week. Additional uncontested evidence is that the Appellant likes to have others over for dinner regularly and participates in meal preparation for the purpose of entertaining and socializing at home.

The Appellant has a need for training, assistance, supervision and guidance with meal preparation. This ALJ finds the authorization of 3.25 hours per week to achieve this is inadequate for this Appellant. This ALJ will not go so far as to say reliance upon the results (even if modified) from the American Time Use Survey is inappropriate for development of guidelines, nor will a finding be made that objective standards are in every case inappropriate for use when determining amount, scope and duration of CLS; however, it is worthy of explicitly drawing attention to the provisions in the Medicaid Provider Manual emphasizing the individual nature of how determinations are made. The PCP process itself has provisions requiring the goals be determined by the clients, their family members and natural supports. Input must be obtained from the person being served and their family members/important people in their life. Authorization of supports and services designed to address the goals set forth in a PCP is part of the process of client service, not done in a vacuum, by a machine or using a process that lacks the flexibility to meet the essential purpose of the exercise. The entire intent of service provision is to address individual's needs that would not otherwise be met. The intent of the provisions in the Medicaid Provider Manual is to address the needs equitably, true, recognizing not all needs of every single client can be met through CMH support alone; however, the individual being served is where the focus is appropriately

aimed.

In this case there is evidence in the record the Appellant is most likely able to make simple breakfasts and lunch items for himself. This is based upon the testimony from the CMH witnesses, who spoke with his roommate. The Appellant is most likely to eat a simple breakfast and lunch much of the time, like many people. However, this does not mean that every breakfast must consist of only the most simple foods, like yogurt or cereal. The CMH provided testimony the Appellant can warm his own soup, make eggs, salad and burritos. This was contested. It was asserted, credibly, that he could only warm something in the microwave if nothing went wrong; in other words, if he correctly pushed the microwave buttons for 2 minutes instead of 2 hours. It was asserted he would not know what to do if he incorrectly programmed the microwave. The CMH did not contest this assertion. It was stated at hearing it is not known whether the Appellant can read a recipe. He must have supervision and assistance with this aspect of preparing something to eat and that is not the same thing day after day, or excessively simple, like a can of soup. There is no evidentiary basis this ALJ could find that the Appellant is able to determine when meat is properly cooked through so that it is not a danger to eat it. There is some credible evidence of record even if he had meals completely prepared on his behalf, he may not be able to re-heat it without supervision, at least some of the time. Here, one of the Appellant's goals is to be able to socialize/entertain by hosting dinner parties. This is not unreasonable on its face. There is no evidence he expects or wants to prepare a 12 course gourmet meal every week. Based upon the evidence of record and the normal preparation involved in planning, preparing, cooking and cleaning for a dinner meal, this ALJ finds the authorization of 15 minutes for the guidance, supervision and training necessary to accomplish this is inadequate for this Appellant. Additionally, this ALJ finds the Medicaid Provider Manual does not support an authorization of only the most limited supports necessary to keep a person alive, rather, the amount, scope and duration of supports and services is required to reasonably achieve the goals set forth in the PCP. Continued training, supervision and guidance in meal preparation with this Appellant, who can perform tasks well once trained, is necessary to reasonably achieve his stated goal. Fifteen minutes per day is not going to reasonably achieve this goal.

Uncontested evidence is in the record the Appellant requires assistance with shopping. Two hours per week is authorized towards this aspect of meeting the goal of residing in the community independently and it was unchanged at the [redacted] PCP meeting. The 2 hours includes list making, transportation to and from on the bus, accompanying the Appellant, supervision of choices, training in determining the best deal and making healthy food choices. This ALJ read the PCP and notes it only addresses shopping for food explicitly. The shopping necessary to reside in the community is more extensive than for someone who resides in a licensed setting, where food, medicine and household supplies are likely to be supplied. In this case, it is not confined to snack purchases, games or even food purchases. It is also for clothing, household needs and other items the Appellant may want to acquire. Shopping consists of making a list, or determining what needs to be purchased and distinguishing it from what wants to be

purchased. The input of the Appellant must be sought and discussed. How a particular purchase fits into the plan for the week or month should be discussed as well as why a particular purchase may not fit into the plan for the week or the month. Furthermore, uncontested evidence was placed into the record that the Appellant is pre-diabetic and his father has weight concerns for him, thus he must be supervised when shopping and trained regarding healthy food options. While his father can and may provide natural supports to address healthy eating habits, shopping is also an appropriate time to continue encouragement and training in food choices, as well as money management. This is time consuming. This is part of training, guidance and supervision necessary to accomplish the Appellant's goal. It cannot and probably should not be accomplished in the same amount of time as a typical American, who can make a decision on the fly or absorb the consequences of a bad decision without having them become dire. The very medical conditions that establish this Appellant as qualified to receive service evidence that he is not likely to be able to accomplish the activities of daily living and instrumental activities of daily living without more time than the typical person. This ALJ finds the time authorized for shopping and all that it actually encompasses in the context of service provision, training, guidance and supervision, may be adequate for food shopping alone but does not provide any support for the other shopping that is required of a person who is residing in the community independently, thus is inadequate in both scope and duration for this Appellant. It is recognized that the CLS authorization alone is not intended to be the only support in place to assist the Appellant in meeting his goals, however, the 2 hours per week authorization is nonetheless found an inadequate amount to reasonably achieve the goal.

The CLS authorization for non-medical transportation was reduced by more than one half from 2 hours per week to 45 minutes per week. There was testimony the Appellant had learned to use the special transportation system currently available in his immediate area. He can call it as he has been trained in its use, however, it does not take him to the church he has been attending for [redacted] years. This is ½ hour from his home. Also, it stops running at 6 pm nightly, thus if he goes out into the community using that system, he must return home by 6 pm. This ALJ finds the goal of residing in the community with an objective of meeting transportation needs is not reasonably achieved by the proposed authorization of 45 minutes per week. The authorization of 2 hours per week was too limited in duration, its reduction proposed only a few months after moving out of his family home. Additionally, it is an inadequate amount to address support for transportation needed to access the community when walking, use of the limited public transportation and natural supports do not meet the need.

The objective of socialization and relationship building does not have any authorization for CLS support. The stated reason is because the Appellant participates in the Ready for Life program (RFL) through [redacted]. Support for his participation in this program is provided through CMH as it was revealed at hearing the college bills the CMH for at least some aspect of the Appellant's participation. It is appropriate to note that should the RFL program be successful, the Appellant will make friends with others he has contact with through the program and ultimately, seek to have contact with them

in other contexts, such as at a dinner party he hosts, one of his objectives, or goals. Or he could seek to further a budding friendship by attendance at another recreational event in the community. These would require use of natural supports or staff time for supervision or training until a routine is established. Additionally, relationship building and socialization need not only be addressed via this one avenue. It is unnaturally limiting and natural supports are already used extensively in supporting the Appellant not only in church attendance on Sundays, but every other time he recreates, volunteers, cleans or otherwise participates in a church related activity. This ALJ finds the evidence of record does not support limiting the Appellant's support in establishing relationships and socialization to participation in RFL.

Community Participation was formerly authorized at 1 hour per week and reduced to 30 minutes per week. The supports were cited to be used for "assistance to find out what activities are available, setting up transportation, going with him the first few times to ensure he knows what he's doing." The proposed authorization of 30 minutes per week of support for community participation has the obvious effect of limiting the Appellant to community participation in activities he is already familiar with and can do alone, which are short term in nature, limited by transportation considerations or what he can do with natural supports. His natural supports are identified in the PCP as his father and his staff/contracted provider, [redacted] No siblings or outside friends who participate in a supportive role were identified at hearing. When considered in combination with the very limited transportation support provided, as discussed above, the support authorized that allows for meaningful access to the community is too limited in amount, scope and duration to reasonably achieve the goal of residing independently in the community while not being confined to activities of very short duration, activities already trained in or accessible by foot and specialized public transportation.

This ALJ has considered the position taken by the CMH that the Appellant has achieved his goal of community participation with his numerous outings and participation at the Ready for Life program. While it is recognized the Appellant has opportunity to participate in the community, the lack of ability to participate in a simple activity during the summer such as blueberry picking, due to lack of staff resources and flexibility of authorized supports and lack of willingness on the part of the available natural supports (who already provide ample natural supports) and despite the effort made to plan this activity in advance, it is apparent the Appellant does not have supports authorization sufficient in amount, scope and duration to reasonably achieve the goal of residing in the community in an independent setting at this time. Maintenance of additional skills may be able to be maintained at the level proposed by the CMH in the future, depending on the circumstances faced by the Appellant. However, at this time, the proposed supports authorized are too limited. Increasing the supports authorized for meal preparation, socialization, community participation and transportation is medically necessary in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH authorized CLS services are inappropriate in amount, scope and duration to reasonably meet the Appellant's goals. CLS services which support the Appellant's activities, health and safety both inside and outside the home are medically necessary in the amount of 26 hours per week.

IT IS THEREFORE ORDERED that:

The CMH decision is REVERSED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 9/21/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.