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],

Docket No. 2011-41745 CMH
Case No. 18699413

Appellant
_______________________/

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 [REDACTED]. [REDACTED], Therapist/Chief Administrator for [REDACTED] Transition Home appeared and testified on behalf of Appellant. [REDACTED], Appellant's mother also testified on Appellant's behalf.

[REDACTED], Hearings Coordinator, [REDACTED], represented the CMH. [REDACTED], Utilization Manager & Director, [REDACTED], and [REDACTED] Utilization Manager, [REDACTED] appeared as witnesses for the CMH.

ISSUE

Did the CMH properly authorize the Appellant's 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 [REDACTED] County Medicaid beneficiary eligible to receive services through L[REDACTED], the Community Mental Health (CMH) Agency serving [REDACTED] and [REDACTED] Counties.

2. 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.

3. The Appellant is an [REDACTED] year-old Medicaid beneficiary. The Appellant is diagnosed with mood disorder, NOS; history of PTSD; fetal alcohol syndrome; borderline intellectual functioning/mild mental retardation; and, seizure disorder. (Exhibit A, p. 2; Exhibit B, p. 9).

4. The Appellant currently resides at Transition Home, a Child Care Institution (CCI) that serves youths to years of age, where her mother placed her on . Prior authorization was not obtained from for this placement. J Transition Home is not credentialed for the Provider Network, but was willing to contact with this home as an in network provider to provide Community Living Support Services (CLS). (Exhibits R, p. 1 & Exhibit 1, p. 5).

5. On , Case Manager submitted a request to for 3 CLS hours per day in home to be provided by 's Transition Home. (Exhibits F & R, p. 1).

6. On , a Specialist Review was completed by Utilization Manager & Director. requested a planning meeting with and the home administrator regarding the medical necessity for the CLS Services requested, to go over the CLS scoring sheet and the treatment plan that had been submitted, which took place on . At the meeting the Medicaid Provider Manual service descriptions for CLS services and the Quarterly Report prepared by were reviewed. was advised that the Quarterly report was primarily therapy based and would not be under CLS services. was provided additional information from the home and received goals and a data sheet that estimated Appellant's Activities of Daily Living (ADL's). (Exhibits F-I & P-R, p.1).

7. A two person Specialist Review was completed on by and another Utilization Manager. On denied 6 of the 18 units requested for CLS resulting in an authorization of 3 hours of CLS or a denial of 1.5 hours of the 4.5 hours requested. (Exhibits J & K).

8. On , the CMH sent an action notice to the Appellant that the requested 4.5 CLS hours per day (moderate tier) were not supported by the documentation as medically necessary. The CMH notice indicated the CLS hours would be authorized at 3 hours a day (low tier) for 4 months and then would be reevaluated for continued need and medical necessity. The notice stated the intensity of the service requested was not supported. Meal prep was approved for 2 of the 6 units requested, indicating the Appellant should be given pictorial instruction for shorter time periods in hopes of retaining information. Laundry was approved for 1 out of the 2 units request for the same rationale as indicated for meal prep. Money management was approved for the 1 unit requested. The medical units were not supported as this would be covered under general ADF. Household chores were approved for 2 out of the 4 units requested for the same rationale as indicated for meal prep. The behavioral/social units

were approved for the 4 units requested. The notice included rights to a Medicaid fair hearing. (Exhibit L).

9. The Michigan Administrative Hearing System received Appellant's request for hearing on [redacted]. (Exhibit 2).

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) 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. 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 scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.*

CMH witness testified she received a request from Appellant's previous case worker in for CLS in home per diem services. met with and in the beginning of June and discussed with them the CLS services that were being requested. went over the Medicaid Provider Manual sections on CLS and provided Ms. Lawson a copy of those sections of the manual. (Exhibit P). The service plans reviewed at the meeting covered therapies and educational pursuits, along with a daily living skills group they would be running and the behaviors and expectations they had for Appellant. (Exhibits H & M). went over what CLS did and did not cover. asked that they focus on ADL's and IADL needs of the Appellant.

Following the meeting, sent an e-mail that included a data sheet with estimates of Appellant's needs for ADL's and IADL's. They were requesting 4.5 hours per day of CLS for the Appellant. (Exhibit I). took the information and did a two person peer review along with . The recommendation after the review was to authorize 3 hours per day from the end of through . CMH would then do a progress review and submit a new request for CLS if necessary.

CMH witness testified that she attended a planning meeting for Appellant on . She met with Appellant, her mother , and another employee of Transitional Home. inquired about Appellant's needs and was advised by that Appellant was doing well in home and at school. Her behaviors were being managed by the staff and they did not appear to be really problematic. It was also reported that Appellant was independent in all of her ADL's, but occasionally needed prompts. The staff was also providing medication monitoring and supervision. also reviewed Appellant's

trauma assessment and the history from the Foundation, Appellant's previous placement.

As part of the two person peer review, also reviewed all the documents and information reviewed by and came to the conclusion that a low tier CLS or 3 hours per day of independent living skills would be sufficient to meet Appellant's needs. This would include meal prep, laundry, and hygiene issues.

Chief Administrator for Transition Home and Appellant's therapist for the past 3 years submitted an exhibit titled "Justification for Requested CLS Services" to CMH for the first time at the administrative hearing. (Exhibit #1). testified that there was no request for CLS by until , even though Appellant was assessed when she first came to the home in February.

clarified that Appellant was doing well in that she was happy with her placement at the transition home and they were able to keep her in this less restrictive placement. pointed out Appellant was on a pass/fail track at school with accommodations set forth in an IEP. further stated that Appellant was not completely independent that she requires a lot of prompting, assisting, and supervision.

After they received approval for only 3 hours CLS per day, said she was asked to prepare the justification for the requested CLS Services that was admitted at the hearing. chose to rely on the statements in the exhibit to support their request for a higher number of CLS hours. also pointed out that Appellant's social presentation is higher than her actual IQ and she is often perceived as higher functioning, more independent, and more able to complete independent skills than her actual ability.

also testified on Appellant's behalf. is Appellant's adoptive mother. indicated that through the years Appellant has always required additional assistance with her daily living skills. indicated that she has shown improvement as she has grown. indicated that Appellant needs to be worked with on home chores on a regular basis. indicated that Appellant can do very little on her own without prompting. Appellant can get started on her own with household chores but would need reminders to complete the tasks. also indicated Appellant had medical needs due to her seizures. stated that she felt additional CLS hours were needed to help her daughter so she could live on her own some day.

The *Medicaid Provider Manual, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Michigan Medicaid policy distinguishes what tasks are covered under community living supports:

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.).

Coverage includes:

- Assisting, (that exceeds state plan for adults) prompting, reminding, cueing, (revised 7/1/11), 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.

MPM, Mental Health and Substance Abuse Section,
July 1, 2011, pp. 106-107.

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve her goals. The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse, Medical Necessity Criteria, Section 2.5* lists the criteria

the CMH must apply before Medicaid can pay for outpatient mental health benefits. 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, July 1, 2011, p. 13.*

The CMH utilization managers reviewed all available information relating to Appellant's needs for ADL's and IADL's. The information included: service plans for the Appellant addressing therapies and educational pursuits, a daily living skills group for Appellant; Appellant's behaviors and their expectations for her at [redacted] Home; an e-mail submitted by [redacted] estimating Appellant's needs for ADL's and IADL's; Appellant's request for 4.5 CLS hours per day; [redacted] report that Appellant was doing well in home and at school; that her behaviors were being managed by the staff at [redacted] Transition Home and her behaviors did not appear to be really problematic; [redacted] report that Appellant was independent in all of her ADL's, but occasionally needed prompts; that the staff at [redacted] Transition Home was providing medication monitoring and supervision; Appellant's trauma assessment; and, the history from the [redacted] Foundation Appellant's previous placement.

After the completion of a two person peer review CMH came to the conclusion that a low tier CLS or 3 hours per day of independent living skills would be sufficient to meet

Appellant's needs. The requested 4.5 CLS hours per day (moderate tier) were not supported by the documentation as medically necessary. The CMH agreed to authorize 3 CLS hours a day (low tier) for 4 months and would then reevaluate Appellant's case for continued need and medical necessity.

CMH found that the intensity of the service requested was not supported. Meal prep was approved for 2 of the 6 units requested, finding that the Appellant should be given pictorial instruction for shorter time periods in hopes of retaining information. Laundry was approved for 1 out of the 2 units request for the same rationale as indicated for meal prep. Money management was approved for the 1 unit requested. The medical units were not supported as this would be covered under general ADF. Household chores were approved for 2 out of the 4 units requested for the same rationale as indicated for meal prep. The behavioral/social were approved for the 4 units requested.

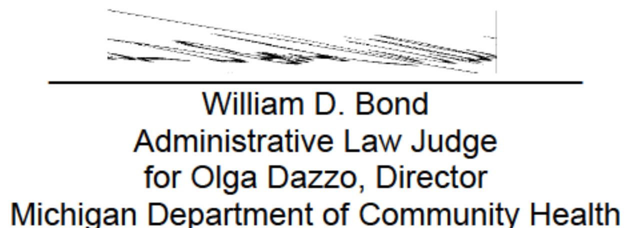
This administrative law judge is limited to the evidence the community mental health had at the time it made its decision. The Appellant bears the burden of proving by a preponderance of the evidence that the additional 1.5 CLS hours per day that were requested are medically necessary. Applying the evidence the CMH had at the time it made its authorization decision in [redacted] supports the CMH position that additional CLS hours above the 3 hours per day authorized are not medical necessity. The Appellant did not meet her burden to establish medical necessity for additional CLS hour above the 3 hours per day determined to be medically necessary by CMH in accordance to Medicaid policy and the Code of Federal Regulations (CFR).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly authorized Appellant's services at 3 CLS hours per day.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: ____9/6/2011____

***** 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.