**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) 334-4147

IN THE MATTER OF:

[redacted],
Appellant
_____/

Docket No. 2011-41910 CMH

## 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], Appellant's mother appeared, on behalf of the Appellant.

[redacted] Assistant Corporation Counsel, [redacted] Community Mental Health Authority (CMH), represented the Department. [redacted], CMH Access Center Manager, appeared as a witness for the Department.

## ISSUE

Did the CMH properly deny the Appellant's request for additional respite and 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).

1. 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.

2. The Appellant was an [redacted] year old Medicaid beneficiary at time of

hearing, date of birth [redacted]. The Appellant is diagnosed with autism and mental retardation. (Exhibit 1, Attachment D).

3. The Appellant lives with his family in an unlicensed setting. (Exhibit 1, Attachment D).

4. Appellant's mother is his primary caregiver. (Exhibit 1, Attachment D).

5. Appellant's current person centered plan (PCP) authorizes CMH services from [redacted] through [redacted]. (Exhibit 1, Attachments A & E).

6. The CMH currently authorizes the following Medicaid services for Appellant: 15 hours per week for CLS, and 12 hours per week respite. (Exhibit 1, Attachments A & E).

7. On [redacted], the Appellant's mother-representative requested an additional five hours per week of respite services and five hours per week of CLS services, for a total of 20 hours of CLS per week and 17 hours of respite services per week.

8. On [redacted], the CMH denied the request for additional respite services and CLS hours, and mailed an adequate action notice that included rights to a Medicaid fair hearing. (Exhibit 1, Attachment A).

9. The Appellant's request for a hearing was received by this office on [redacted] (Exhibit 1, Attachment B).

## 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.

The evidence of record shows that the Appellant's person centered plan currently authorized 15 hours of CLS per week and 12 hours of respite services per week. (Exhibit 1, Attachments A & E). On [redacted], the Appellant's mother-representative requested an additional five hours per week of respite services and five hours per week of CLS services, for a total of 20 hours of CLS per week and 17 hours of respite services per week.

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.*

The *Medicaid Provider Manual, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Its states with regard to respite services and community living supports:

> **17.3.J. RESPITE CARE SERVICES**
>
> Services that are provided to assist in maintaining a goal of living in a natural community home by temporarily relieving the unpaid primary caregiver (e.g., family members and/or adult family foster care providers) and is provided during those portions of the day when the caregivers are not being paid to provide care. Respite is not intended to be provided on a continuous, long-term basis where it is a part of daily services that would enable an unpaid caregiver to work elsewhere full time. In those cases, community living supports, or other services of paid support or training staff, should be used. Decisions about the methods and amounts of respite should be decided during person-centered planning.
>
> *July 1, 2011, Page 117.*

> **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 7/1/2011), 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.

*July 1, 2011, Page 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. (Exhibit 1, Attachment H).

The CMH witness [redacted] testified the Appellant was currently authorized to receive 15 hours per week of CLS. (Exhibit 1, Attachment E). Additional hours were requested by the mother because [redacted] feels she needs additional assistance with the Appellant. The Department denied the request for the additional CLS hours as there was no documentation to show that the additional hours were medically necessary to meet the Appellant's needs. [redacted] opined that the current authorization of 15 CLS hours per week were sufficient in amount, scope and duration to meet the Appellant's needs.

[redacted] further testified the Appellant was currently authorized to receive 12 hours per week for Respite Services. (Exhibit 1, Attachment E). An additional 5 hours were requested by [redacted] because there has been an increase in behavior by the Appellant. [redacted] explained that a behavioral assessment has been authorized for the Appellant, but has not yet been implemented. (Exhibit 1, Attachment E). [redacted] testified that based upon the outcome of the assessment there are Behavioral Services that could be authorized to address the increased behavior of the Appellant. [redacted] concluded by stating that in her opinion an increase in the number of respite hours was not medically necessary to meet the stated reasons for the request.

The Appellant's mother [redacted] testified the Appellant was getting older and going through more changes and was being given more responsibilities. [redacted] testified when the Appellant is in the community he runs off. They are also trying to do things to prepare him for certain tasks they need to do as a family out in the community. [redacted] stated the Appellant cannot be out on his own as he does not know to cross the street on his own and is a danger to himself and others. She said there were additional chores they wanted Appellant to do, and hygiene matters such as potty training, and additional goals they wanted to have the Appellant accomplish. [redacted] did not feel it was right that the Appellant was being denied the extra 5 hours of CLS and 5 hours of respite services per week they had requested.

The Appellant bears the burden of proving by a preponderance of the evidence that the an additional five hours per week for respite services and five hours per week for CLS services are medically necessary. The Appellant's mother was given the opportunity to explain why the additional respite services and CLS hours were necessary. The testimony of the Appellant's mother was not specific enough to establish medical necessity above and beyond the number of respite services and CLS hours CMH assessed in accordance to the Code of Federal Regulations (CFR).

The CMH must authorize respite services in accordance to the CFR and state policy. The CMH provided sufficient evidence that it adhered to the CFR and state policy when authorizing 12 hours per week for respite services and 15 hours per week for CLS for the Appellant. The Appellant failed to prove by a preponderance of the evidence that an additional five hours per week of respite services and five hours per week of CLS services are medically necessary.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied the request for an additional five hours per week for respite services and five hours per week for CLS services in addition to the 12 hours per week for respite services and 15 hours per week for CLS previously authorized for the Appellant.

**IT IS THEREFORE ORDERED** that:

The CMH decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 8/12/2011

***** 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.