

**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:

Docket No. 2011-13295 CMH  
Case No. [REDACTED]

[REDACTED],

Appellant

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**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], represented the CMH. [REDACTED], appeared as witnesses for the Department.

**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 Medicaid beneficiary receiving services through [REDACTED] Community Mental Health (CMH).
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 a [REDACTED] Medicaid beneficiary. The Appellant is diagnosed with cerebral palsy and severe mental impairment. (Exhibit 1).
4. The Appellant lives with her mother. (Exhibit 1).
5. The Appellant also receives 21 hours per week of personal care and assistance

- with activities of daily living through the Department of Human Services Home Help Services program. (Exhibit 1, page 3; testimony).
6. The Appellant attends a ██████████ public school program five days a week on average. (Exhibit 1, page 5; testimony).
  7. In Appellant's ██████████ through ██████████ PCP the CMH authorized six hours per day for CLS. (Exhibits 1 and 2).
  8. During her ██████████ PCP review, it was noticed that Appellant was receiving 21 hours per week of personal care, and assistance with activities of daily living, through the Department of Human Services Home Help Services program. (Exhibit 1, page 3).
  9. During the review the CMH noted that some of the tasks for which Medicaid was paying for CLS were covered by DHS Home Help Services. Applying a coordination of services to Appellant's functional assessment the CMH determined she only had a medical need for three hours of CLS. (Exhibit 1, pages 2, 3).
  10. In ██████████, the CMH sent a notice to the Appellant notifying that after coordinating Home Help Services with previously authorized CLS hours only three CLS hours per week were supported as medically necessary. (Exhibit 1).
  11. The Michigan Administrative Hearings System received Appellant's request for hearing on ██████████. (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) 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 scope, duration, and intensity to reasonably achieve the purpose of the covered service. See *42 CFR 440.230*.

CMH witness ██████████ testified that CMH CLS policy states that a beneficiary must apply for and seek the maximum number of DHS Home Help Services hours before CMH CLS can be approved. Witness ██████████ stated that CMH CLS hours are for the tasks of prompting, reminding and guiding and Home Help Services are more for the hands-on personal care. CMH witness ██████████ explained that during the development of the person centered plan the CMH will identify what tasks CLS is being asked to cover, and to coordinate those CLS tasks with the DHS Home Help Services authorization documentation in light of the person's functional assessment, in order to determine the amount of medically necessary CLS hours.

During the hearing the Appellant's mother asked about the difference between the services covered under Department of Human Services Home Help Services and community mental health community living supports. The Appellant's mother stated that the Appellant attends a

██████████ public school program five days a week on average. The Appellant's mother stated that she works and it is helpful to have the community living supports providers present.

The *Medicaid Provider Manual, Mental Health/Substance Abuse*, section articulates Medicaid policy for Michigan. It states with regard to 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 her 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, 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.

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- 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).

*MPM, Mental Health and Substance Abuse Section,  
December 1, 2010, Page 100.*

The CMH is mandated by federal regulation to perform an assessment, which includes review of medical documentation, DHS Home Help Services authorization, a functional assessment and number of hours away from home at school for the Appellant to determine what Medicaid services are medically necessary and to determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve her goals.

The CMH representative and CMH witness pointed out that the Medicaid Provider Manual language above states that CLS services cannot supplant DHS Home Help Services hours. The CMH representative explained that a functional assessment was performed for the

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Appellant which determined she needed six hours of services. The CMH representative said that when reviewing the 21 hours weekly Appellant's mother is paid to perform Home Help Services to Appellant, there was an overlap of Medicaid paying for services, and therefore only three hours of CLS services could be authorized.

A review of the Medicaid Provider Manual supports the CMH position that CMH cannot use Medicaid funding to pay for services that DHS Home Help Services are covering.

This administrative law judge is bound by the federal regulation, state law, and policy. It is important to note that Medicaid pays for 21 hours of Home Help Services per week and that Appellant goes to school five days a week. This administrative law judge cannot order services for which there is another Medicaid-funded program covering. For this reason this administrative law judge cannot order, based on equity alone, the six hours CLS previously authorized and which Appellant's mother requested to be continued.

The Appellant bears the burden of proving by a preponderance of the evidence that the three hours per week of CLS was inadequate to reasonably achieve the Appellant's CLS goals. The Appellant did not meet the burden to establish medical necessity above and beyond the three CLS hours determined to be medically necessary by CMH in accordance to 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 three CLS hours per week.

**IT IS THEREFORE ORDERED** that:

The CMH decision is AFFIRMED.

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Lisa K. Gigliotti  
Administrative Law Judge  
for Olga Dazzo, Director

cc:

[REDACTED]

Date Mailed: 5/24/2011

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**\*\*\* 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.