

**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:

████████████████████

Appellant

Docket No. 2011-15269 CMH
Case No. 89083957

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 ██████████. ██████████ appeared on her own behalf. ██████████ represented the CMH. ██████████, appeared as a witness 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 ██████████ (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 ██████████ Medicaid beneficiary. The Appellant is diagnosed with adult muscular dystrophy. The Appellant's muscular dystrophy results in needing the use of a wheelchair, and assistance with hands-on dressing, and hands-on food preparation. (Exhibit 1, page 12; Exhibit 2).
4. The Appellant lives in an apartment. (Exhibit 1, page 20).

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5. The Appellant also receives Home Help Services (HHS) through the Department of Human Services (DHS).
6. In Appellant's [REDACTED] through [REDACTED] Individual Plan of Service (PCP) the CMH authorized the following Medicaid services: six hours per day CLS, seven days per week; and five hours per day, five days a week, for skill-building and supported employment.
7. [REDACTED], an Individual Plan of Service meeting took place at the CMH. (Exhibit 1, pages 1 through 20).
8. As part of the [REDACTED] planning meeting the Appellant requested six hours per day CLS, seven days per week. (Exhibit 1).
9. On or before [REDACTED], the CMH indicated it would authorize only part of the six hours per day CLS requested. The CMH Utilization Department reviewed the authorization request and found that there was no medical necessity to support the previous number of hours for laundry, meal prep, dressing, and wheelchair cleaning. The CMH reason for denying full six hours per day was because part of the activities described were not CLS activities, and that wheelchair cleaning was personal care and not CLS.
10. On [REDACTED], the CMH sent a notice to the Appellant notifying that the requested six CLS hours per day were not supported by the documentation as medically necessary. The CMH notice indicated the CLS hours would be authorized at 2.5 hours a day, seven days per week. The notice included rights to a Medicaid fair hearing. (Exhibit 1, pages 21-23).
11. 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

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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 [REDACTED] testified that CMH can only approve CLS hours for tasks that are covered in CLS policy. CMH witness [REDACTED] explained that during the development of the person centered plan the CMH will identify covered tasks which can be covered by Medicaid CMH dollars and review medical documentation to determine the amount of medically necessary CLS hours.

Authorization for CLS to assist with Appellant's dressing, laundry, meal preparation, and cleaning of wheelchair:

The Appellant is a person with adult muscular dystrophy. The Appellant has significant physical limitations due to the adult muscular dystrophy including needing the use of a wheelchair, and assistance with hands-on dressing, laundry, and hands-on food preparation.

During the hearing the Appellant exhibited sound cognitive ability and an excellent ability to articulate her needs. When asked to describe what assistance she receives from a CLS chore provider Appellant testified that she instructs her chore providers on how to perform the hands-on parts of food preparation. The Appellant gave a description of directing her chore provider on how to prepare the spaghetti she ate for dinner the previous day. The Appellant stated that she instructs the care providers on which clothes she wishes to wear and the chore provider assists with the physical management part of pulling on and off the clothes she has selected.

The CMH witness indicated that the difference between the six hours of CLS requested and the 2.5 hours per day authorized was due to fewer hours than requested in the areas of dressing, laundry, meal preparation, and wheelchair cleaning. The CMH witness distinguished between what tasks Medicaid dollars can be used to pay for under community living supports, versus what tasks Medicaid can be used to pay for under DHS home help services. The CMH representative and witness explained that the reason CMH did not authorize all the community living supports hours that were requested was because some of the services described in the PCP as needed were actually home help services personal-care tasks and not community living supports prompting, reminding, and guiding.

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, 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).

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

The CMH is mandated by federal regulation to perform a PCP assessment 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 his goals.

The CMH utilization department reviewed the Appellant's ██████████ PCP assessment and the description of the tasks asked to be covered for CLS. The CMH witness testified that a review showed that CLS was being requested for completion of laundry; which is a HHS task and not a CLS task. The CMH witness testified that a review showed that CLS was being requested for cleaning of Appellant's wheelchair; which is a HHS task and not a CLS task.

The CMH witness testified that a review showed that at least part of the CLS that was being requested for dressing and meal preparation was for hands-on help preparing food and pulling on and off clothes; which are HHS tasks and not CLS tasks. The CMH witness explained that if the CLS provider was prompting or reminding the Appellant on how to prepare foods, or for what clothes to wear to be weather-appropriate, CLS could be authorized. The CMH witness further explained that because the Appellant was actually prompting the CLS provider on how to prepare foods and what clothes she desired to wear, for that part of the task performed it was a HHS task; and CLS dollars were prohibited from being used.

This administrative law judge is limited to the evidence the community mental health had at the time it made its decision. Applying the evidence the CMH had at the time it made its authorization decision in ██████████ supports the CMH position that Appellant was not able to demonstrate medical necessity for CLS above 2.5 hours per day, seven days a week.

It is noted that Appellant's authorization for Medicaid-covered skill-building and supported employment is not at issue and will continue as authorized. It is also noted that discussion ensued about Appellant seeking HHS hours for hands-on HHS tasks she may need assistance with.

The Appellant bears the burden of proving by a preponderance of the evidence that the six hours per day of CLS as described in Appellant's ██████████ PCP CLS goals, were all CLS-covered

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tasks and not HHS tasks. The Appellant did not meet the burden to establish medical necessity above the 2.5 CLS hours determined to be medically necessary CLS tasks 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 2.5 CLS hours per day, seven days per week.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/27/2011

***** 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.