

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. 2011-25222 CMH
Case No. ██████████

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 ██████████. ██████████, the Appellant's mother, appeared on behalf of the Appellant.

██████████ represented ██████████ CMH. ██████████, was present on behalf of the Department. ██████████, was present on behalf of the Department. ██████████, was present and ██████████ was also present on behalf of 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 a ████████-year-old Medicaid beneficiary. The Appellant is diagnosed with cerebral palsy and epilepsy. She is diagnosed with mental retardation, severity unknown due to an inability to obtain a valid I.Q. score. She is also seriously emotionally impaired due to diagnoses which include Mood disorder NOS (296.90), impulse control disorder, NOS (312.30) and Autism (299.0).
4. The Appellant engages in self injurious behaviors, self endangerment and aggression towards her mother.
5. The Appellant lives with her mother and is her only child. She has had previous hospitalizations including ██████████ and ██████████
██████████
6. The Appellant's mother is her primary caregiver.
7. The Appellant attends school full time five days per week.
8. The Appellant has CLS authorization to address her behaviors and assist with training.
9. Following a review of the documentation of the Appellant's most recent behavior, the CMH authorized CLS at six hours per day seven days per week; a reduction of 2 hours per day.
10. During the review the CMH noted that hourly charting of the Appellant's behavior by CLS staff demonstrates an improvement in her functioning. She is hitting much less, although still non-compliant.
11. The Appellant still exhibits disruptive behavior but her aggressive behaviors are diminished according to documentation prepared by staff who are with her daily.
12. The CMH sent an Adequate Action Notice to the Appellant notifying that the eight hours per week CLS were not supported by the documentation as medically necessary and would be reduced to six hours per day.
13. The Michigan Administrative Hearing System received the Appellant's request for hearing ██████████.

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*.

The *Medicaid Provider Manual, Mental Health/Substance Abuse*, section sets forth 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 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,
July 1, 2010, Page 100.*

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.

Applying the facts of this case to the documentation in the annual assessment and person centered plan supports the CMH position that the Appellant, who is in school full-time, has a medical necessity for CLS supports. The amount, scope and duration of the supports authorized are contested. The CMH has authorized six hours per day of CLS support, seven days per week.

The Appellant's mother testified that she is the single mother of the Appellant and has no support from family members or friends. She has to provide for her daughter without help from anyone. She said it takes her two hours to prepare her for school in the morning because her behavior is different with her than with staff. She did not dispute the documentation created by the CLS staff demonstrating a less physically aggressive demeanor and greater level of compliance and cooperation with re-direction by staff. She testified her daughter does not behave that way for her, thus she requires additional support.

The CMH presented specific, reliable and credible testimony that the staff who conducted the assessment of the Appellant were very familiar with her. She was appropriately and adequately assessed. The documentation used to identify what supports level is medically necessary was very detailed and specific, charting her behaviors hour by hour. This charting resulted in a picture of the Appellant that established she is moving towards achieving the goals of more compliant behaviors. She is less physically aggressive as charted in her daily behavior log. She is able to be re-directed as documented in her daily behavior log. She is compliant with medication administration as documented in her behavior logs

The Medicaid Provider Manual requires parents of children with disabilities to provide the same level of care they would provide to their children without disabilities. While the Appellant obviously requires a great deal more time, attention and care than typical sixteen-year-old children, the Appellant's mother does have adequate support to address the medically necessary needs exhibited by her daughter.

The Medicaid Provider Manual explicitly states that recipients of B3 supports and services, the category of services for which Appellant is eligible, is not intended to meet every minute of need, in particular when parents of children without disabilities would be expected to be providing care:

Decisions regarding the authorization of a B3 service (including the amount, scope and duration) must take into account the PIHP's documented capacity to reasonably and equitably serve other Medicaid beneficiaries who also have needs for these services. The B3 supports and services are

not intended to meet all the individual's needs and preferences, as some needs may be better met by community and other natural supports. Natural supports mean unpaid assistance provided to the beneficiary by people in his/her network (family, friends, neighbors, community volunteers) who are willing and able to provide such assistance. **It is reasonable to expect that parents of minor children with disabilities will provide the same level of care they would provide to their children without disabilities.** MDCH encourages the use of natural supports to assist in meeting an individual's needs to the extent that the family or friends who provide the natural supports are willing and able to provide this assistance. PIHPs may not require a beneficiary's natural support network to provide such assistance as a condition for receiving specialty mental health supports and services. The use of natural supports must be documented in the beneficiary's individual plan of service. (Underline added).

MPM, Mental Health and Substance Abuse Section, July 1, 2010, Page 98

A review of the Medicaid Provider Manual supports the CMH position that B3 supports and services are not intended to meet all of an individual's needs and that it is reasonable to expect that the Appellant's mother would provide care for the period of time proposed by the CMH without use of Medicaid funding.

The Appellant bears the burden of proving by a preponderance of the evidence that the six hours per day 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 six 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 CLS services at six hours per day seven days per week.

[REDACTED]
Docket No. 2011-25222 CMH
Decision and Order

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

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

cc: [REDACTED]

Date Mailed: 5/27/2011

***** 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.