STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 2012-23910 CMH

[redacted]

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq*., upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted], Appellant's mother, appeared and testified on Appellant's behalf. [redacted], Appellant's Support Team Coordinator, also testified as a witness for Appellant. Appellant was also present during the hearing, but did not testify.

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

ISSUE

Did the CMH properly deny Appellant's request for 45 hours per week of Community Living Supports (CLS) and, instead, authorize only 16 hours per week of such services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a[redacted] year-old male who has been diagnosed with, among other conditions, bipolar disorder, manic depression, cerebral palsy, visual impairment, and epilepsy. (Exhibit 1, pages 19, 29, 31).

2. The 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. Appellant has been receiving Medicaid covered services through the CMH since [redacted], including supports coordination, occupational therapy,

physical therapy, behavioral services, CLS and respite care. (Testimony of [redacted]).

4. On [redacted], Appellant underwent his annual assessment. (Exhibit 1, pages 19-40). On [redacted], a new person centered plan was developed for Appellant. (Exhibit 1, pages 42-50).

5. As part of that plan and review, Appellant requested 45 hours a week of CLS for a year. (Exhibit 1, page 44),

6. On November [redacted], the CMH sent a notice to Appellant notifying him that his request for 45 hours a week of CLS had been denied and that, instead, the CMH would only authorize 16 hours a week of CLS. The stated reason for the denial was that "Documentation submitted does not justify the requested service." (Exhibit 1, pages 7-9).

7. The Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing on [redacted] (Exhibit 1, pages 11-13).

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…
>
> (42 USC 1396n(b))

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.

The Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy and, with respect to CLS, it states:

> **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, 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 appears to be needed, the beneficiary 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. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the 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 non-medical 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 coverage Personal Care in Specialized Residential Settings. 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.

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a DHS decision. Reminding, observing, guiding, and/or training of these activities are CLS

> coverages that do not supplant Home Help or Expanded Home Help.
>
> (MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 107-108)

In addition to the above policy, the MPM also states that B3 supports and services, such as CLS, are 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.
>
> (MPM, Mental Health and Substance Abuse Section, October 1, 2011, page 105)

Here, [redacted]ien testified that, in her professional opinion, the authorization of 16 hours of CLS per month is sufficient to meet the goals outlined in Appellant's person centered plan. (Testimony o[redacted] Appellant disagrees with that determination, but fails to meet his burden of proof.

To the extent Appellant's representative argues that the new amount of CLS authorized differs greatly from what was authorized in the past, her argument is largely irrelevant. Each assessment and authorization of services stands on its own and is not controlled by what was granted in the past. Moreover, the 45 hours of CLS Appellant was

receiving during the most recent time period was based on a recent surgery he underwent and, previously, he had only been receiving 16 hours a month of CLS. (Testimony of [redacted]).

Looking at the goals in this case and the definition of CLS identified in policy, it is clear that Appellant's representative is seeking CLS for assistance with tasks where CLS is not the appropriate service. For example, while Appellant's representative testified that increased CLS is necessary because Appellant requires constant monitoring due to his seizures (Testimony of [redacted], monitoring Appellant is not part of his CLS (MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 107-108). Similarly, assisting Appellant with his homework and helping him get to bed are also not encompassed by CLS or the goals in Appellant's person centered plan. (Exhibit 1, page 44; MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 107-108).

As described above, CLS is available for assisting, prompting, reminding, cueing, observing, guiding and/or training in certain tasks, but the purpose behind those services is to move Appellant toward independent and CLS are not meant to be permanent or replace programs such as HHS, where tasks are performed for beneficiaries based on their needs. (MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 107-108). Moreover, some of the assistance/tasks identified by Appellant's representative are not covered by CLS and [redacted] specifically testified that, in her professional opinion, the authorization of 16 hours of CLS per month is sufficient to meet the goals outlined in Appellant's person centered plan.

The burden is on Appellant to prove by a preponderance of the evidence that the CMH erred. Given the record in this case, Appellant has failed to meet that burden and the CMH's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant's request for 45 hours a week of CLS and, instead, authorized only 16 hours a week of CLS.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

_____

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[redacted]
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Decision and Order

[redacted]

Date Mailed: 5-9-12

***** 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.

[redacted]