

**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. ██████████

Case No. ██████████

**Decision and Order**

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

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on behalf of Appellant. ██████████, Appellant's grandparents, and Dr. ██████████, Appellant's psychologist, also appeared as witnesses for Appellant. ██████████, Fair Hearings Officer, appeared and testified on behalf of the ██████████ Community Health Organization (██████████).<sup>2</sup> ██████████, Appellant's case manager, also appeared as a witness for the ██████████.

Following the hearing, the record was left open until ██████████ at the request of Appellant's representative. Appellant's representative subsequently submitted additional evidence. (Exhibit P).

**ISSUE**

Did the ██████████ properly deny Appellant's request for a temporary increase in Community Living Support (CLS)?

**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 ██████████ year-old male who has been diagnosed with autism and

<sup>1</sup> Appellant has an attorney in this matter, but both the attorney and Appellant's mother advised this Administrative Law Judge's office that Appellant's mother would be the one appearing on behalf of Appellant at the hearing.

<sup>2</sup> A previous hearing in this matter was held on ██████████. Appellant chose not to attend the hearing and, instead, appeared by brief. At the hearing, ██████████ moved to dismiss the matter for lack of jurisdiction and this Administrative Law Judge left the record open for a week so that ██████████ could submit evidence in support of its motion. However, ██████████ failed to provide sufficient evidence demonstrating a lack of jurisdiction and its motion was denied. This hearing was then scheduled.

symptoms of depression and anxiety. (Exhibit K, page 1; Exhibit L, page 1; Exhibit M, page 1; Exhibit P, page 3).

2. [REDACTED] 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 had been receiving CLS through the [REDACTED]. (Testimony of [REDACTED]; Testimony of [REDACTED]).
4. On [REDACTED], Appellant's mother emailed [REDACTED], Appellant's case manager. As part of that email, she wrote: "I have an immediate need for additional CLS staffing hours for a two-week period as I will be traveling out of town for imminent employer-paid training." (Exhibit B, page 1). Appellant's mother also wrote in the email: "What information do you need from me in order to authorize additional CLS staffing hours?" (Exhibit B, page 1).
5. [REDACTED] personally responded to Appellant's mother's email. (Testimony of [REDACTED]; Testimony of [REDACTED]).
6. On [REDACTED], [REDACTED] sent Appellant a notice stating that it was denying the request. Specially, the notice asserted "Request for additional CLS hours is denied due to [Appellant] not meeting medical criteria for the service." (Exhibit A, page 1).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing regarding the denial of a temporary increase in CLS.
8. After her request was denied, Appellant's mother paid to have her parents and Appellant flown down to Dallas with her so that her parents could stay with Appellant and watch him while she was completing her work training. Appellant's mother also paid for their meals. (Exhibit O).

### **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 [CHANGE MADE 7/1/11]**

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 7/1/11**) 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. Community Living Supports (CLS) provides support to a beneficiary younger than 18, and the family in the care of their child, while facilitating the child's independence and integration into the community. This service provides skill development related to activities of daily living, such as bathing, eating, dressing, personal hygiene, household chores and safety skills; and skill development to achieve or maintain mobility, sensorymotor, communication, socialization and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the child. These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings, but are not intended to supplant services provided in school or other settings or to be provided when the child would typically be in school but for the parent's choice to home-school the child. (added 7/1/11)

(MPM, Mental Health and Substance Abuse Section,  
October 1, 2011, pages 107-108)

Given the above policy and Findings of Fact, the [REDACTED] properly denied Appellant's mother's request for a temporary increase in CLS. Appellant's mother did not seek additional CLS for appropriate reasons and, as argued by Respondent, simply sought child care for a period of time while Appellant's mother was on a trip as part of her employment. CLS is not to be used for child care and must be a medically necessary

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service “used to increase or maintain personal self-sufficiency, facilitating an individual’s achievement of his goals of community inclusion and participation, independence or productivity.” (MPM, Mental Health and Substance Abuse Section, October 1, 2011, page 107). A CLS worker is not a babysitter and, instead, is suppose to assist, support or train a beneficiary with respect to the development of identified skills and activities. Appellant’s mother was not seeking such development, support or training. Instead, she merely sought someone to watch Appellant. Accordingly, her request for CLS should have been denied.

Appellant’s representative also seeks to expand the focus of this hearing and address a number other issues relating to Appellant’s services. However, as indicated during the hearing, this Administrative Law Judge’s jurisdiction is limited to the issue raised in this appeal, *i.e.* the denial of the request for a temporary increase in CLS. Moreover, Appellant’s other issues are already the subject of other appeals and are in various stages of the administrative hearing process. Consequently, they need not and should not be addressed here. With respect to the negative action that is at issue here, the [REDACTED]’s decision should be sustained for the reasons discussed above.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED] properly denied Appellant’s request for a temporary increase in CLS.

**IT IS THEREFORE ORDERED** that:

The Department’s decision is **AFFIRMED**.

\_\_\_\_\_  
Steven Kibit  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/29/2012