

**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. 2012-56612 CMH
Case No. [REDACTED]

[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]. At Appellant's request, [REDACTED] appeared and testified on Appellant's behalf during the hearing. Appellant and [REDACTED] Appellant's caregiver, also testified as witnesses. [REDACTED], Due Process Hearing Coordinator, appeared and testified on behalf of the Oakland County Community Mental Health Services Program (CMHSP). [REDACTED] Assistant Director of Community Supports, also testified as a witness for the CMHSP.

ISSUE

Did the CMHSP properly deny Appellant's request for 90 hours per week of Community Living Supports (CLS) during the summer and, instead, authorize only 71.5 hours per week of such services?¹

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 Duchene Muscular Dystrophy. (Exhibit 6, pages 35, 37).
2. The CMHSP is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMHSP service area.
3. Appellant has been receiving services through the CMHSP, including

¹ There is a dispute over what the issue on appeal is in this case. For the reasons discussed below, this Administrative Law Judge (ALJ) concludes that the issue is the partial denial of Appellant's request for 90 hours of CLS during the summer and that the ALJ has jurisdiction over that issue.

Community Living Supports (CLS), and through the Michigan Department of Human Services (DHS), including Adult Home Help (AHH), since ██████████
██████████

4. As of ██████████ Appellant was attending school at the University of Michigan while receiving both CLS and AHH. (Testimony of Appellant).
5. Specifically Appellant was receiving 81 hours and two per diems of CLS per week. Appellant had staff with him 16.5 hours on Monday, 16 hours on Tuesday, 15 hours on Wednesday, 14.5 hours on Thursday, 19 hours on Friday, and all day Saturday and Sunday. The services were split between two provides: Life Center and Direct Hire. (Exhibit 6, page 17).
6. With respect to AHH, Appellant was also receiving 76 hours and 35 minutes of AHH per month, with his sister providing 14 hours and 54 minutes of those services per month and a staffing agency providing the other 61 hours and 45 minutes per month. (Exhibit 6, page 17)
7. In an Individual Plan of Service (IPOS) Periodic Review dated ██████████ ██████████ CMHSP staff noted that Appellant was still in school and that his services should remain at the same level while he is in school. (Exhibit 6, page 17).
8. However, that review also stated that a combination of AHH, CLS and natural supports will be utilized once Appellant came home from school and that only 72 hours of CLS per week would be authorized at that time. (Exhibit 6, page 17).
9. Appellant denies ever receiving notice in February or March of the planned change identified in the ██████████ IPOS Periodic Review. (Testimony of Appellant).
10. Appellant and his care provider met with CMHSP staff on ██████████ (Exhibit 2; Exhibit 3; Testimony of Appellant; Testimony of ██████████).
11. In the Case Management Assessment drafted by the CMHSP staff following that meeting, it was noted that Appellant was in the process of applying for jobs/internships for the summer. (Exhibit 3, page 3).
12. The Case Management Assessment also provides that it was electronically signed by ██████████ which was prior to the meeting taking place. There are no other signatures, electronic or otherwise, on the document. (Exhibit 3, page 10).
13. Appellant testified that he left that meeting with the understanding that, once he knew his work/internship schedule for the summer, he would determine the CLS hours he required and request them from the CMHSP. (Testimony of Appellant).

██████████
Docket No. 2012-56612 CMH
Decision and Order

14. At some point, Appellant's supports coordinator ██████████ also drafted an IPOS Meeting report with respect to the ██████████ meeting. (Exhibit 2, pages 1-10).
15. In that report, the effective date of the plan was identified as ██████████ and the expiration date as ██████████ (Exhibit 2, page 1).
16. In Goal Number 10, the report further stated that Appellant will be authorized for 71.5 hours of CLS per week, split between two providers while he is home during the summer. (Exhibit 2, page 7).
17. However, the report also provided that "[a]s soon as the internship placement has been identified and ██████████ is aware of his responsibilities and work schedule ██████████ will meet with his Independent Supports Coordinator to begin the planning process of identifying what his needs are to realize his dream of participating in an internship placement. Independent supports coordinator will obtain verbal updates during routine visits and conversations with ██████████. Progress will be documented in plan progress notes." (Exhibit 2, page 6).
18. Furthermore, the report provides in its summary, "██████████ and his ISC discussed that his authorizations might change due to summer employment or internship opportunities. At that time the ISC will conduct a periodic review to accommodate staffing needs. ██████████ and his ISC also discussed staffing needs for his return to school in the fall and we will complete another periodic review at that time." (Exhibit 2, page 8).
19. Oren electronically signed the IPOS Meeting report on ██████████. The report also provides that Appellant's signature was obtained externally on ██████████ (Exhibit 2, page 10).
20. Appellant testified that he believes he met with ██████████ in ██████████ and was told to sign something, and that he did so without having the opportunity to read it. (Testimony of Appellant).
21. Appellant also testified that, once he learned his work schedule, he contacted ██████████ in late ██████████ and requested 90 hours of CLS during the summer. (Testimony of Appellant).
22. ██████████ did not testify during the hearing. Neither Respondent's representative nor its witness recalls any request for 90 hours and they testified that there is no record of any request. (Testimony of ██████████. Testimony of ██████████).
23. According to Appellant, he did not receive any response from CMHSP until he received an IPOS Periodic Review dated ██████████ (Testimony of Appellant).

24. The IPOS Periodic Review dated ██████████ provides that, given Appellant's recent scheduling changes, Appellant is now authorized for 71.5 hours of CLS per week, split between two providers. (Exhibit 1, page 1).
25. However, the review also stated that, per Appellant's outlined schedule, his staffing needs for CLS will increase from 72 to 75.5 hours a week. (Exhibit 1, page 3).
26. The IPOS Periodic Review dated ██████████ further notes that Appellant was still receiving 76 hours and 35 minutes of AHH per month. (Exhibit 1, page 1).
27. The IPOS Periodic Review dated ██████████ was electronically signed by Oren on ██████████ It was not signed by Appellant. (Exhibit 1, page 11).
28. According to Appellant, once he got the IPOS Periodic Review dated ██████████ and statement that he would receive 71.5 hours of CLS during the summer, he filed the appeal in this case. (Testimony of Appellant).
29. According to Respondent's witnesses, Appellant made a verbal request for an additional 3.5 hours of CLS per week and that request was denied in a written notice dated May 18, 2012. (Exhibit 4, page 1; Testimony of ██████████; Testimony of ██████████).
30. Appellant denies making any such verbal request or receiving any notice of denial. (Testimony of Appellant).
31. On ██████████ the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing. The request stated that the reduction of CLS hours during the summer made it impossible for him to work a full internship and lead to safety concerns. Appellant also asserted that he has no natural supports. (Exhibit 6, pages 30-31).
32. Sometime in the middle or end of ██████████ Appellant's AHH was reduced from the 76 hours and 35 minutes per month that he was receiving to 14.9 hours a month. Appellant did not appeal that reduction. (Testimony of Appellant; ██████████)

CONCLUSIONS OF LAW

As a preliminary issue, this Administrative Law Judge would note that there is a dispute over the issue on appeal and whether there is jurisdiction to hear that issue. Appellant asserts that the issue on appeal is the denial of his request for 90 hours of CLS per week during the summer and the authorization of only 71.5 hours of CLS per week. Respondent on the other hand, argues that Appellant is not challenging the award of 71.5 hours of CLS per week and that the only negative action on appeal is the denial of

Appellant's request for an additional 3.5 hours of CLS during the summer.

The request for hearing is clear that Appellant is appealing the reduced hours he received during the summer and this Administrative Law Judge finds credible Appellant's testimony that he made a request to his supports coordinator Katherine Oren for 90 hours of CLS per week and that, in response, he received an IPOS Periodic Review dated May 9, 2012, that only authorized 71.5 hours of CLS per week. (Testimony of Appellant). Oren was the proper person for Appellant to request the services from and she did not testify during the hearing, leaving Appellant's testimony un-contradicted. Moreover, in the IPOS Meeting report generated by Oren with respect to the March 30, 2012 meeting, it was twice specifically stated that Appellant's authorizations might change due to summer employment and that the supports coordinator would conduct a periodic review to accommodate staffing needs after Appellant knew his work schedule. (Exhibit 2, pages 6, 8).

Appellant testified to his request for 90 hours of CLS per week and that request appeared to be anticipated by his plan documents. There is no testimony contradicting Appellant and, while there is no written documentation of the request, this Administrative Law Judge finds him to be credible. The CMHSP did issue a written denial of a request for an additional 3.5 hours of CLS per week, but there is no evidence of that request either and Appellant denied making it. Given Appellant's credible testimony, the plan documents and the request for hearing, this Administrative Law Judge finds both that (1) the issue on appeal is the authorization of 71.5 hours per week of CLS rather than the 90 hours per week requested; and (2) there is jurisdiction to hear that appeal.

Additionally, this Administrative Law Judge would note that, while Appellant reports a significant change in his services during the summer, not all of those changes in services are before this Administrative Law Judge. Appellant and his representative improperly group the partial denial of his request for CLS and the subsequent reduction in Adult Home Help (AHH) services together. However, this Administrative Law Judge's jurisdiction is limited to solely reviewing the negative action appealed in this case, *i.e.* the partial denial of CLS. The reduction in Home Help occurred after the request for hearing was filed in this action and this Administrative Law Judge does not have jurisdiction to hear that issue.

With respect to the issue before this Administrative Law Judge, the Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Chapter, 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.

Docket No. 2012-56612 CMH
Decision and Order

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, April 1, 2011, pages 108-109.]

However, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

In addition to requiring medical necessity, the MPM also states that B3 supports and services, such as respite care services, 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
Chapter, ██████████ page 106].

Here, Appellant bears the burden of proving by a preponderance of the evidence that the CMHSP erred in denying his request for 90 hours a week of CLS during the summer and instead granting 71.5 hours a week of such services. For the reasons discussed below, this Administrative Law Judge finds that Appellant failed to meet his burden of proof with respect to that partial denial of services.

As discussed above, while Appellant and his representative improperly grouped the partial denial of his request for CLS and the subsequent reduction in Adult Home Help (AHH) services together, this Administrative Law Judge's jurisdiction is limited to reviewing the partial denial of CLS. Moreover, the CMHSP's decision must be reviewed in light of the information it had at the time of the decision. At the time of the decision at issue in this appeal, Appellant's AHH services had not been reduced.

The MPM specifically states that a beneficiary can be awarded for AHH and CLS at the same time, but it also provides that CLS may not supplant AHH and that CLS should be used when AHH is not enough:

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 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 Chapter, ██████████ pages 108-109.]

At the time the partial denial was made, Appellant was receiving 76 hours and 35 minutes per month of AHH. Those significant services strongly support the decision to deny the request for 90 hours of CLS per week and only authorize 71.5 hours per week. Appellant and his representative repeatedly argued that he had insufficient services during the summer, but they also grouped CLS and AHH together. Appellant's AHH services were reduced to 14.9 hours a month during the summer and that reduction, rather than the approval of less CLS, appears to account for many of his problems he had during the summer.

Additionally, Appellant and his representative argue that he is an adult, single man and therefore has no natural supports that should be taken into account in determining his CLS hours. However, while it is true that Appellant's family members cannot be forced into helping him, it is undisputed that they do help him. For example, Appellant testified regarding the assistance he sister gives him on weekends and outside of AHH. Given that type of assistance, the CMHSP properly took Appellant's natural supports into account in determining his CLS hours.

Moreover, while Appellant and his representative properly quoted the MPM for the assertion that 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" (MPM, Mental Health and Substance Abuse Chapter, ██████████ page 108), that assertion is not dispositive here. While the assertion is true, the MPM also specifically states that B3 supports and services, such as CLS, "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." (MPM, Mental Health and Substance Abuse Chapter, ██████████ page 106). Accordingly, while Appellant reports not being able to play wheelchair hockey, go to movies, have friends over, visit friends, play care games or work as much as he would like, those activities relate more to what he would prefer to do rather than medical necessity.

Given that CLS is a B3 service that is not intended to meet all of Appellant's needs and preferences, in addition to Appellant's natural supports and Home Help services discussed above, this Administrative Law Judge finds that Appellant failed to meet his burden of proving by a preponderance of the evidence that the CMHSP erred in denying his request for 90 hours a week of CLS during the summer and instead granting 71.5 hours a week of such services.

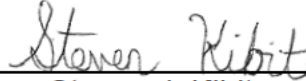

Docket No. 2012-56612 CMH
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMHSP properly denied Appellant's request for 90 hours a week of CLS and, instead, authorized only 71.5 hours a week of CLS.

IT IS THEREFORE ORDERED that:

The CMHSP's decision is AFFIRMED.



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

cc:



Date Mailed: 8/28/2012

***** 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.