

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-21484 CMH
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's brother, appeared and testified on behalf of Appellant. Appellant and ██████████, supports coordinator, also testified as witnesses. ██████████, Manager of Due Process, appeared on behalf of the ██████████ (CMH). ██████████ and ██████████, both Utilization Care Coordinators at the CMH, appeared as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for 66 hours of Community Living Supports (CLS) per month and instead authorize 40 hours of such services per month?

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 woman who has been diagnosed with epilepsy, foot problems, mild mental retardation, seizures and a learning disability. (Exhibit 1, pages 31, 42; Testimony of ██████).
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 is currently receiving the Medicaid covered services of Community Living Supports (CLS), supports coordination, and skill-building through the CMH. (Testimony of ██████).

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4. On [REDACTED], Appellant requested an increase to 66 hours of CLS per month. (Testimony of [REDACTED]).
5. On [REDACTED], the CMH sent Appellant a notice stating that, while the request for 66 hours per month of CLS was denied, but that 26.25 hours of CLS per month had been approved. (Exhibit 1, pages 12-14).
6. Appellant filed a local appeal challenging that the approved amount of CLS. (Testimony of [REDACTED]).
7. Following that local appeal, the CMH sent notice to Appellant notifying her that it now approved 40 hours of CLS respite per month. (Exhibit 3, pages 36-38).
8. The Michigan Administrative Hearing System (MAHS) received Appellant's subsequent request for hearing on [REDACTED]. (Exhibit 2, pages 1-5).

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 C.F.R. § 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 C.F.R. § 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 U.S.C. § 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, ██████████ testified that she authorized 1 hour of CLS per month for assistance with Appellant's doctor's appointments, 5 hours of CLS per month for assistance with menu planning and shopping, 8 hours of CLS per month for training/assistance with meal preparation, 8 hours of CLS per month for laundry training, 15 minutes of CLS per month for safety training, and 4 hours of CLS per month for community outings. (Testimony of ██████████). In total, Wagner authorized 26.25 hours of CLS per month. (Testimony of ██████████). As further testified to by ██████████, no CLS was authorized for supervising Appellant or performing tasks such as cooking or laundry for her.

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(Testimony of [REDACTED]). Instead, the CLS was authorized for training and the ultimate goal is to move Appellant toward independence. (Testimony of [REDACTED]).

[REDACTED] testified that, following Appellant's local appeal, she authorized an additional 13.75 hours of CLS per month. (Testimony of [REDACTED]). One hour a month was added for medication monitoring and the time for safety training was increased by 45 minutes per month. (Testimony of [REDACTED]). Additionally, CLS for community outings was increased by 12 hours per month. (Testimony of [REDACTED]). [REDACTED] also testified that CLS cannot be used to supplant Home Help Services (HHS), but can be authorized to support such services. (Testimony of [REDACTED]).

In response, Appellant's representative/brother [REDACTED] testified that both he and Appellant's doctor agree that Appellant requires more assistance. (Testimony of [REDACTED]). [REDACTED] also indicated that Appellant is receiving HHS, but it is not enough to meet her needs and she requires additional assistance with tasks such as housekeeping, shopping, bathing, and cooking. (Testimony of [REDACTED]). While unsatisfied by Appellant's number of HHS hours, [REDACTED] has not appealed the allocation of services. (Testimony of [REDACTED]). [REDACTED] did not testify that Appellant needs further training or education with respect to activities of daily living. (Testimony of [REDACTED]).

Given the nature of what Appellant's representative seeks, the CMH's decision must be affirmed. As described above, CLS is available for assisting, prompting, reminding, cueing, observing, guiding and/or training in the tasks identified by Appellant, 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).

Appellant and Appellant's representative appear to seek permanent assistance in performing tasks such as she receives with HHS. However, the Medicaid Provider Manual provides that CLS services may not supplant state plan services such as Home Help and are inappropriate for what Appellant seeks. (MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 107-108). "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." (MPM, Mental Health and Substance Abuse Section, October 1, 2011, page 107).

To the extent Appellant and her representative disagree with the amount of HHS they receive, their issue is not before this court. This Administrative Law Judge would note, however, that the MPM does state that if the Appellant requests it, the PIHP case manager or supports coordinator must assist her 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. (MPM, Mental Health and Substance Abuse Section, October 1, 2011, pages 108). As for the issue properly before this court, the CMH's decision is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly authorized 40 hours of CLS hours per month based on the information available at the time of its decision.

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

cc:



Date Mailed: 3/8/2012

***** 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.