

**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:

Docket No. 2012-22144 CMH

██████████

██████████

Appellant

_____ /

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 ██████████ 2. Appellant appeared and testified on her own behalf. ██████████ Appellant's chore worker, ██████████ ██████████, Appellant's case manager, and ██████████, Appellant's daughter-in-law, also appeared as witnesses for Appellant. ██████████, Regulatory Compliance Officer, appeared on behalf of the ██████████ Community Mental Health (CMH). ██████████ Supervisor of Care Management Department, appeared as a witness for the CMH.

ISSUE

Did the CMH properly reduce Appellant's Community Living Supports (CLS) from ██████████ hours per week to ██████████ hours per week?

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 (Exhibit 4, page 1) who has been diagnosed with, among other conditions, dyspnea, chronic pain syndrome, osteoarthritis, diabetes mellitus, chronic fatigue syndrome, irritable bowel syndrome, fibromyalgia, depression, obesity, and hypertension (Exhibit 3, page 1).
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 through the CMH, including Community Living Supports (CLS). (Exhibit 4, page 7;

Testimony of Appellant; Testimony of Wheeler). Appellant also receives Home Help Services (HHS) through another state program. (Testimony of Appellant).

4. On ██████████, a new person centered plan was developed for Appellant. (Exhibit 4, pages 1-8).
5. As part of that plan and a review of Appellant's case, the CMH decided to reduce her CLS. (Testimony of Wheeler).
6. On ██████████ the CMH sent a notice to Appellant notifying her that her CLS hours were going to be reduced from ██████ hours per week to ██████ hours per week. The effective date of the reduction was identified as ██████████ (Exhibit 5, page 1).
7. The Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing on ██████████ (Exhibit 2, page 1).

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

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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 reduced Appellant's CLS hours because any additional hours are not medically necessary given the natural supports Appellant receives from her family and the HHS she receives from the Department. (Testimony of ██████████. In response, Appellant and her witnesses testified that ██████ hours of CLS a week is insufficient to meet Appellant's needs. (Testimony of Appellant; Testimony of ██████████). Appellant and her care provider also testified that, while the reduction was not implemented due to the timely appeal, the reduced hours would cause problems with Appellant taking her medications. (Testimony of Appellant; Testimony of ██████████). The letters submitted by Appellant's daughter-in-law and her care provider

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also emphasize their concerns about Appellant taking her medications. (Exhibit 3, pages 3-5).

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 appears to seek permanent assistance in performing tasks such as she receives with HHS. However, as described above, the Medicaid Provider Manual provides that CLS services may not supplant state plan services such as Home Help. (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 disagrees with the amount of HHS she receive, her issue is not before this court. This Administrative Law Judge would note, however, that the MPM does state that if the Appellant requests it, a 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 reduced the amount of CLS hours per month authorized for Appellant.

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: 4-3-12

***** 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.