

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

P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Docket No. 2012-54880 CMH
Case No. ██████████

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.* and upon the Appellant's request for a hearing.

After due notice, a hearing held on ██████████ ██████████, Appellant's mother and guardian, appeared and testified on Appellant's behalf. ██████████ ██████████, Appellant's sister, and ██████████, Jr., Appellant's brother, also testified on behalf of Appellant. ██████████ Manager of Due Process, appeared on behalf of the Genesee County Community Mental Health (CMH). ██████████ Utilization Care Coordinator; ██████████, Manager of Utilization Management; ██████████ Case Manager; and ██████████, Supervisor of Case Management Services; appeared as witness for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for 24 hours a day of Community Living Supports (CLS) and, instead, only authorize 10 hours a day for 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 ██████████ who has been diagnosed with mood disorder NOS; anxiety disorder NOS, obsessive-compulsive disorder; and moderate mental retardation. (Exhibit 1, pages 4, 43).
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 and his services have included assessments, supports coordination, medical nutrition therapy, treatment plan development, monitoring of specialty services, skill-building and training, transportation, medication review, personal care services and community living supports (CLS). (Exhibit 1, pages 29-30).
4. Appellant has been living in a specialized setting for over 5 years. In that setting, he receives both CLS and personal care services. The CMH pays for those services at a per diem rate. (Testimony of ██████████).
5. Appellant's guardian and family wished to move him from that specialized setting to a home with his brother. In conjunction with that planned move, they requested that 24 hours a day of CLS be provided in the new home. (Testimony of Appellant's representative; Testimony of ██████████).
6. On ██████████ the CMH sent a notice to Appellant notifying him that the request for 24 hours of CLS per day was denied and that only 10 hours of CLS per day would be authorized. The stated reason for the partial denial was that "[m]edical necessity for additional hours was not met." (Exhibit 1, page 1).
7. The Michigan Administrative Hearing System (MAHS) received a complete request for hearing filed on behalf of Appellant on ██████████ (Exhibit 2, pages 1-5).

CONCLUSIONS OF LAW

As discussed above, the issue in this case is whether the CMH properly denied Appellant's request for 24 hours a day of Community Living Supports (CLS) and, instead, only authorize 10 hours a day for such services. With respect to that issue, Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred. For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet his burden and that the CMH's decision should be sustained.

With respect to CLS, the Medicaid Provider Manual (MPM), Mental Health/Substance Abuse Section, articulates the relevant policy and, in part, 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.

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

Based on Appellant's needs for assistance and training with respect to personal self-sufficiency, community inclusion and participation, and independence, the 10 hours of CLS per day appears sufficient.

The real question in this case is whether the CLS should also account for Appellant's personal care needs and need for supervision. It is undisputed that Appellant does have significant care needs and requires 24-hour supervision. It is also undisputed that those needs were being met in the licensed setting.

However, as defined and described above, CLS does not cover supervision. Appellant may have been receiving such supervision in the licensed home, but he could not receive such services if he moved into an independent setting.

Additionally, as defined and described above, CLS does not include personal care. The CMH also properly noted that the only type of personal care that a CMH can authorize must take place in a licensed setting. See MPM, Mental Health and Substance Abuse Section, [REDACTED] pages 297-450.] The MPM has a specific section on personal care in a licensed specialized residential setting, Section 3.20, but there is no corresponding section on personal care outside such a setting. Accordingly, while Appellant was receiving personal care in the licensed home, he could not receive such services if he moved.

Appellant's representative does note that, as provided in the MPM, CLS may be used for personal care activities while the beneficiary awaits determination by the Department of Human Services regarding the amount, scope and duration of Home Help or Expanded Home Help to be authorized in a home. However, in this case, Appellant has not applied or been approved for Home Help. Accordingly, a temporary authorization of CLS for personal care services is not appropriate.

Appellant's representative asserts that Appellant cannot apply for those services until he actually moves in, and that he cannot move in with just 10 hours of CLS. This Administrative Law Judge does appreciate the position that Appellant is in, but, like the

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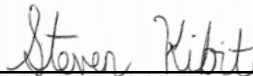
CMH, is bound to follow the MPM. Given those policies, the CMH's decision was correct.

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 24 hours a day of CLS and, instead, only authorized 10 hours a day of CLS.

IT IS THEREFORE ORDERED that:

The CMH's decision is **AFFIRMED**.



Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/19/2012

***** 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.