

**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:

██████████

Appellant

\_\_\_\_\_ /

**Docket No.** 2012-67110 CMH

**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 held on ██████████ Laurie Van Wagoner, Appellant's sister and guardian, appeared and testified on Appellant's behalf. ██████████ social worker, also testified on Appellant's behalf. ██████████, Executive Director, represented the Gratiot County CMHSP. ██████████ Clinical Director, ██████████ Supervisor, ██████████ Home Manager, and ██████████ Case Manager, also testified as witnesses for the CMHSP.

**ISSUE**

Did the CMHSP properly deny Appellant's requests for skills-training assistance and transportation to skills training and, instead, authorize Community Living Supports (CLS) and a referral to Michigan Rehabilitation Services (MRS)?

**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 Down's syndrome and moderate mental retardation. (Exhibit 6, page 4; Exhibit 7, page 11).
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 Medicaid covered services through the CMHSP. (Testimony of Appellant's sister).
4. During at least 2008 and 2009, those services included a skills-building

program at Mid-Michigan Industries, Inc. (“MMI”). (Exhibit 5, pages 1-7).

5. However, Appellant was frequently absent from the skills-building program and he was not very productive when he did attend. (Exhibit 5, pages 1-7; Testimony of Appellant’s sister; Testimony of ██████████).
6. In ██████████ Appellant stopped working at MMI after the local CMH stopped supporting local vocational workshops. (Exhibit 7, page 7).
7. In ██████████ Appellant again requested skills-training at MMI and transportation to that facility. (Testimony of Appellant’s sister; Testimony of ██████████).
8. On ██████████ the CMH sent a notice to Appellant notifying him that his request for services had been denied. The stated reason for the denial was that another appropriate service was available to meet his needs. (Exhibit 2, page 1).
9. On ██████████ Appellant moved from Gratiot County to Isabella County. However, Respondent acknowledges that Gratiot County is still the County of Financial Responsibility and is responsible for Appellant’s medically necessary services. (Testimony of ██████████).
10. The Michigan Administrative Hearing System (MAHS) received a complete request for hearing filed on behalf of Appellant on ██████████ ██████████. (Exhibit 13, page 1).

### **CONCLUSIONS OF LAW**

As described above, dispute in this case involves Respondent’s Appellant’s requests for skills-training and transportation to skills-training. Respondent argues that, instead of those requested services, it authorized the more appropriate CLS and offered to refer Appellant to MRS for possible employment. Appellant’s representative, however, is not interested in just CLS and would like Appellant to at least try the MMI program again. For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof and that Respondent’s decision should therefore be affirmed.

The Michigan Medicaid Provider Manual (MPM) identifies both CLS and skills-building assistance as Medicaid covered services. For example, with respect to CLS, the MPM 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, April 1, 2012, pages 108-109.]

With respect to skill-building assistance, the MPM states:

### **17.3.K. SKILL-BUILDING ASSISTANCE**

Skill-building assistance consists of activities identified in the individual plan of services and designed by a professional within his/her scope of practice that assist a beneficiary to increase his economic self-sufficiency and/or to engage in meaningful activities such as school, work, and/or volunteering. The services provide knowledge and specialized skill development and/or support. Skill-building assistance may be provided in the beneficiary's residence or in community settings.

Documentation must be maintained by the PIHP that the beneficiary is not currently eligible for sheltered work services provided by Michigan Rehabilitation Services (MRS). Information must be updated when the beneficiary's MRS eligibility conditions change.

Coverage includes:

- Out-of-home adaptive skills training: Assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and supports services incidental to the provision of that assistance, including:

- > Aides helping the beneficiary with his mobility, transferring, and personal hygiene functions at the various sites where adaptive skills training is provided in the community.
- > When necessary, helping the person to engage in the adaptive skills training activities (e.g., interpreting).

Services must be furnished on a regularly scheduled basis (several hours a day, one or more days a week) as determined in the individual plan of services and should be coordinated with any physical, occupational, or speech therapies listed in the plan of supports and services. Services may serve to reinforce skills or lessons taught in school, therapy, or other settings.

- Work preparatory services are aimed at preparing a beneficiary for paid or unpaid employment, but are not job task-oriented. They include teaching such concepts as attendance, task completion, problem solving, and safety. Work preparatory services are provided to people not able to join the general workforce, or are unable to participate in a transitional sheltered workshop within one year (excluding supported employment programs).

Activities included in these services are directed primarily at reaching habilitative goals (e.g., improving attention span and motor skills), not at teaching specific job skills. These services must be reflected in the beneficiary's person-centered plan and directed to habilitative or rehabilitative objectives rather than employment objectives.

- Transportation from the beneficiary's place of residence to the skill building assistance training, between skills training sites if applicable, and back to the beneficiary's place of residence.

Coverage excludes:

- Services that would otherwise be available to the beneficiary. [MPM, Mental Health/Substance Abuse Services Chapter, April 1, 2012 version, pages 120-121.]

Moreover, this Administrative Law Judge would note that both CLS and skill-building assistance are classified as B3 supports and services. With respect to B3 supports and services, the MPM provides, in part:

### **17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES**

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation/Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

#### **Community Inclusion and Participation**

The individual uses community services and participates in community activities in the same manner as the typical community citizen.

Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.)

activities. A beneficiary's use of, and participation in, community activities are expected to be integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with mental retardation).

### **Independence**

"Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent of such freedom for him/herself during person-centered planning.

For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently.

### **Productivity**

Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness.

For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity may be successful participation in home, pre-school, or child care activities. Children under 18 would be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses. [MPM, Mental Health/Substance Abuse Services Chapter, April 1, 2012 version, pages 105-106.]

Here, the parties appear to agree on Appellant's needs, but disagree on how to best meet those needs. Regarding that dispute, Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying his requests.

As a preliminary matter, this Administrative Law Judge would note that Appellant's representative appears to misunderstand what services are provided through CLS. Appellant's representative reiterated that Appellant needs more services than just going shopping or going to dinner, but CLS is much more than those two activities. As described in the MPM and testified to by ██████████ CLS is generally used to assist personal self-sufficiency and facilitate an individual's achievement of his goals of community inclusion, independence, and productivity. Assisting and training can occur in any number of areas, including meal preparation, laundry, household care, activities of daily living (e.g., bathing, eating, dressing, personal hygiene), shopping, money management; non-medical care; socialization, relationship building, and attendance at medical appointments.

Appellant's representative also expressed concern that CLS simply involves Appellant and his CLS worker working together in Appellant's residence. However, the 1:1 assistance can take a number of forms and Appellant can access groups or classes, while also benefitting from with the assistance of the CLS worker. Specific examples of community activities and recreation opportunities given in the MPM include attending classes, movies, concerts and events in a park, volunteering and voting. The location of CLS is also discretionary and the supports may be provided in the participant's residence or in community settings, such as libraries, city pools, camps, etc. Moreover, CLS further includes transportation to and from the beneficiary's residence to community activities.

In addition to the benefits and scope of CLS, this Administrative Law Judge would also note that it is undisputed that, while going to MMI in ██████████ Appellant was frequently absent from the skills building program and he was not very productive when he did attend. (Exhibit 5, pages 1-7; Testimony of Appellant's sister; Testimony of ██████████). The parties offer different reasons for why the MMI program was not productive, but, in either case, the fact remains that it did not work in the past.

In authorizing B3 services, "[c]are should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned." (MPM, Mental Health/Substance Abuse Services Chapter, ██████████ version, page 105). Given Appellant's lack of participation in the past, it is not clear that he wants to go back to MMI.

Moreover, "The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation/Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified." (MPM, Mental Health/Substance Abuse Services Chapter, ██████████ version, page 105). In light of Appellant's history at MMI and his lack of productivity there, it is not clear that skill-building assistance could reasonably be expected to meet the identified goals.

Additionally, the MPM specifically states that assistance with skills-building does not include services “that would otherwise be available to the beneficiary.” (MPM, Mental Health/Substance Abuse Services Chapter, ██████████ version, page 121). Here, as described above, the types of skill-building Appellant seeks is available through CLS.<sup>1</sup>

For the above reasons, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof with respect to the denial of his requests and that the Respondent’s decision must be affirmed. Assistance with skills-building has failed in the past and it is not clear that Appellant would want such services in the future. On the other hand, CLS can meet all of his needs and can be tailored to meet all of Appellant’s representative’s concerns.

**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 skills training and transportation to skills training and, instead, authorized CLS and a referral to MRS.

**IT IS THEREFORE ORDERED** that:

The CMH’s decision is AFFIRMED.

*Steven Kibit*

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

cc: ██████████  
██████████  
██████████

Date Mailed: 10-10-2012

**\*\*\* 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.

<sup>1</sup> CLS is not vocationally oriented. (Testimony of Hetzman). However, to the extent that Appellant wants to work, Respondent did offer to refer him to MRS for possible employment or training. (Testimony of Charping).