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) 373-4147

IN THE MATTER OF:

[redacted]

Docket No. 2013-17258 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held [redacted]. Appellant's [redacted], appeared and testified on Appellant's behalf. Appellant also appeared but did not provide any testimony.

Attorney [redacted], Corporate Counsel for Kalamazoo County Community Mental Health and Substance Abuse Services (CMH or Department), represented the Department. [redacted], MA, LPC, RN, Utilization Review Coordinator; [redacted], Customer Service Manager; and [redacted], Access Supervisor, appeared as witnesses for the Department.

ISSUE

Did CMH properly terminate Community Living Supports (CLS) for Appellant?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a [redacted] year-old Medicaid beneficiary, born [redacted]. Appellant is diagnosed with Fetal Alcohol Syndrome and is labeled as Borderline Intellectual Functioning. Appellant receives special education services at school. (Exhibit A, pp 4-5).

2. Appellant is prescribed the medications [redacted] and [redacted]. Appellant was recently weaned off [redacted] because it caused her to have headaches. (Exhibit A, p 7).

3. Appellant resides with her [redacted] and an older [redacted] Appellant has developed strong relationships with her CLS workers and has some [redacted] at [redacted] (Exhibit A, p 5).

4. Appellant has been receiving services through CMH since [redacted] Appellant has been receiving outpatient therapy and psychiatric services since [redacted] CLS services began in [redacted] (Exhibit A, p 5; Testimony).

5. On [redacted], [redacted], MA, LPC, RN, Utilization Review Coordinator for CMH, conducted a utilization review of Appellant's services. (Exhibit A). [redacted] concluded that medical necessity for continued CLS no longer existed because Appellant had shown progress with the goals in her POS and because other services were available that could meet what CLS had been doing. (Exhibit A, p 10; Testimony).

6. On [redacted], CMH sent an Adequate Action Notice to the Appellant indicating that her CLS were being terminated. The Notice included rights to a Medicaid fair hearing. (Exhibit A, pp 1-2).

7. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [redacted] (Exhibit 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 CFR 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 CFR 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…

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) Medicaid Managed Specialty Services waiver. Lifeways CMH contracts with the Michigan Department of Community Health to provide specialty mental health services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See 42 CFR 440.230.* Medical necessity is defined by the Medicaid Provider Manual as follows:

> **2.5 MEDICAL NECESSITY CRITERIA**
>
> The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.
>
> **2.5.A. MEDICAL NECESSITY CRITERIA**
>
> Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:
>
> - Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
> - Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or

- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
  - deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - experimental or investigational in nature; or
  - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

MPM, Mental Health and Substance Abuse Section, [redacted]*, Pages 12-14*

The *Medicaid Provider Manual, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Its states with regard to community living supports:

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, reminding, 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 is needed, the beneficiary, with the help of the PIHP case manager or supports coordinator **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. The PIHP case manager or supports coordinator must assist, if necessary, the beneficiary in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization amount, scope and duration of Home Help does not accurately reflect the beneficiary's needs based on 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 nonmedical 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 Personal Care services. 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.

MPM, Mental Health and Substance Abuse Section, [redacted], Page 113-114.

[redacted], MA, LPC, RN, Utilization Review Coordinator for CMH testified that she began a utilization management review of Appellant's services on [redacted]. [redacted] explained that the purpose of the utilization management review is to take a look at the services a person is receiving in an objective manner to determine if all authorized services are still medically necessary. [redacted] testified that her review demonstrated that the record no longer indicated medical necessity for CLS because Appellant had become stable in the community and had made progress with the goals and objectives in her POS. [redacted] noted that there had been no recent assessment or documentation of aggressive behavior specific to disrespect for Appellant's [redacted] or social difficulties. [redacted] all noted that Appellant's activity level had improved through bicycle riding and dog walking and that Appellant has adjusted well to the family move to [redacted] and that Appellant had become familiar with the community. [redacted] also noted that Appellant had met people and made friends and that she improved her [redacted] in order to not lose her [redacted] [redacted] suggesting that she has peers to communicate with and respects limits set by her [redacted] [redacted] testified that she would recommend terminating Appellant's CLS as not medically necessary. [redacted] indicated that there were also other services available that could meet what CLS had been doing

for Appellant, such as the [redacted] program through [redacted] (which Appellant already participates in), [redacted] at [redacted] 4- and the [redacted] for computer use. (Testimony; Exhibit A, p 10-11)

Appellant's [redacted] testified that CLS has really been helping Appellant, especially with her homework. Appellant's [redacted] indicated that before the CLS started, Appellant was really in a shell and today she has a totally different demeanor. Appellant's [redacted] testified that even though Appellant has made progress, she would continue to benefit from CLS because they help her with her homework, help her be more active, and have helped her with [redacted]

Based on the evidence presented, CMH did properly terminate Appellant's CLS. As indicated above, all services must be medically necessary, meaning those services are, "Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity." Additionally, CLS hours "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." Here, Appellant has increased her self-sufficiency and become more productive with the assistance of CLS. Given that Appellant has shown both stability and progress with her goals and objectives, CLS is no longer medically necessary.

The burden is on the Appellant to prove by a preponderance of evidence that CLS is still medically necessary. As indicated above, Appellant did not meet this burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The CMH properly terminated Appellant's CLS.

IT IS THEREFORE ORDERED that:

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

/s/
Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[redacted]
Docket No. 2013-17258 CMH
Hearing Decision & Order

cc: [redacted]

Date Mailed: January 28, 2013

***** 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.