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:

[redacted],

Docket No. 2013-21955 CMH
Case No. [redacted]

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 was held on [redacted]. [redacted], the Appellant's [redacted] appeared and testified on the Appellant's behalf. [redacted], represented Network 180, the mental health authority for Kent County Michigan (CMH or Network 180). [redacted] and [redacted], Network 180, appeared as witnesses for the Department. [redacted], [redacted], MOKA, was present as an observer.

ISSUE

Did Network 180 properly reduce the Appellant's Community Living Supports (CLS) authorization?

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 female who has been diagnosed with mild mental retardation, epilepsy, enuresis, and sleep apnea. (Exhibit B, pages 2-3 and 11)

2. The CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the applicable service area.

3. The CMH in turn contracts with various service providers, including MOKA.

4. On [redacted] the Appellant participated in a face to face screening by Network 180 and it was determined she was eligible fore services as a

person with a developmental disability. The Appellant's [redacted] selected MOKA as the provider of supports coordination. (Hearing Summary)

5. On [redacted] a Social Assessment was completed by the Supports Coordinator. (Exhibit B pages 1-9)

6. The Appellant was authorized for services through the CMH and MOKA. The initial authorization of services for the period of [redacted] through [redacted] included supports coordination, enhanced health care, and psychological testing by technician. It was noted that no services were definitively decided upon and additional services would be added through an addendum. (Exhibit C, pages 1-3)

7. On [redacted] a Personal Care Needs Worksheet was completed by the [redacted] and the Appellant scored as a person who needed the low behavior intensity of CLS. (Exhibit D, pages 1-5)

8. By the Addendum to the Individual/Family Plan of Service dated [redacted] an authorization for CLS services at the daily level of care for low behavior rate was added for the period of [redacted] through [redacted]. (Exhibit C, pages 6-8)

9. The Appellant's CLS was only authorized for 90 days to allow MOKA to determine whether low behavior was the correct level of support. (Supports Coordinator Testimony)

10. On [redacted] the [redacted] updated the Appellant's Social Assessment. The [redacted] found that during the time the Appellant was being served by the CLS staff, the Appellant was not exhibiting any behavioral issues and the seizures were of low intensity, short and did not require staff intervention. (Exhibit B pages 10-20; [redacted] Testimony)

11. On [redacted], another Personal Care Needs Worksheet was completed by the [redacted]. Based on the information available for the updated assessment it was determined that the Appellant's medical necessity for CLS hours was 67 15-minute units per week. (Exhibit D pages 6-10; [redacted] Testimony)

12. By the Addendum to the Individual/Family Plan of Service dated [redacted], the Appellant's CLS authorization was reduced to 67 15-minute units per week. (Exhibit C, pages 9-11)

13. On [redacted], the Michigan Administrative Hearing System (MAHS) received the hearing request filed on behalf of the Appellant. It was later clarified that the appeal was contesting the reduction to the Appellant's CLS hours. (Exhibit A)

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 also 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 USC 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.

Regarding Community Living Supports, the MPM provides:

> **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].

While CLS is a Medicaid covered service, Medicaid beneficiaries are also only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. *See* 42 C.F.R. § 440.230.

With respect to medical necessity, the Medicaid Provider Manual states:

> **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.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and

- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and

- Made within federal and state standards for timeliness; and

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

- Documented in the individual plan of service. [MPM, Mental Health and Substance Abuse Section, April 1, 2012, pages 12-13.]

Moreover, in addition to requiring medical necessity, the MPM also states that B3 supports and services, such as Community Living Supports, 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, April 1, 2012, page 106 (emphasis added)].

The Appellant's [redacted] disagrees with the reduction to the Appellant's CLS hours. However, the Appellant's [redacted] has not been satisfied with the services provide by the CLS staff. There were complaints regarding staff not actually working with the Appellant, treating her like a child, and/or the type of activities completed or performed when staff did interact with the Appellant. The Appellant's [redacted] asserts that what was going on was not consistent with the goals and objectives for the Appellant. Additionally, there were concerns regarding the potential safe transportation of the Appellant and disagreement on ideas for appropriate socialization activities. The Appellant's [redacted] also contests the CMH relying on the reports of the CLS staff

regarding behavioral issues and seizures. In particular the Appellant's [redacted] asserted that the CLS hours should not be reduced based upon strangers saying the Appellant does not have seizures and asserted that the only way to really know would be with an EEG. The Appellant's [redacted] testified the Appellant has intense seizures that prevent her from getting into REM sleep. The Appellant's [redacted] stated that the additional CLS hours are needed because the Appellant is afraid of being alone and getting hurt. (Exhibit 1; [redacted] Testimony)

The scope of this hearing is limited to reviewing the determination to reduce the Appellant's CLS authorization. The CMH appropriately gathered additional information from the CLS staff in additional to information from the Appellant, her [redacted], and other sources for the updated Social Assessment. It is noted that the CLS staff did not report that the Appellant does not have any seizures. Rather, it was reported that in the month of [redacted] the Appellant had daily seizures, but they were short in length and did not require any staff intervention. (Exhibit B page 12) Additional information was also gathered from the CLS staff regarding the behavioral issues the Appellant's [redacted] had reported in the [redacted] Social Assessment. In the month of [redacted], the CLS staff indicated the Appellant was not exhibiting any negative or aggressive behavioral issues toward staff or herself. (Exhibit B, page 17)

It was also noted that at the time of the initial [redacted] Social Assessment, the Appellant's [redacted] reported the Appellant was rarely, if ever left home alone. However, the Appellant's [redacted] went back to work at the beginning of [redacted], so the Appellant is home alone for a few hours before the CLS staff arrives and sometimes the CLS staff leaves before the Appellant's [redacted] gets home. It was noted that the Appellant has managed quite well during the times she is alone. (Exhibit B page 15) This does not support the Appellant's [redacted] testimony that the Appellant is afraid of being alone and getting hurt. Further, the mere fact that the Appellant would be home alone does not alone justify additional CLS hours. As described above, CLS is not meant to provide basic care. Instead, CLS is only "used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity." (MPM, Mental Health and Substance Abuse Section, April 1, 2012, page 108)

It is clear that the Appellant's [redacted] is concerned with the Appellant's safety and well being and there have been negative experiences in the past. However, the limitations imposed by the Appellant's [redacted] restriction that the Appellant can not leave the home without her [redacted], such as for an educational setting or going anywhere with CLS staff, preclude working on educational and community related goals. (Exhibit B pages 18-20; [redacted] Testimony; [redacted] Testimony)

The Appellant has the burden of demonstrating by a preponderance of the evidence that Respondent erred in reducing the Appellant's CLS authorization. In this case, the Appellant has failed to meet that burden of proof. The information gathered for the updated [redacted] Social Assessment, including the information provided by the CLS staff, supports the CMH determination to reduce the Appellant's CLS authorization.

The available information did not support the medical necessity of a continuation of the authorization for CLS services at the daily level of care for low behavior rate. The authorized 67 15-minute units per week should be sufficient to meet the Appellant's remaining CLS goals.

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 Appellant's CLS authorization.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: _____

***** 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.