

**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:**

████████████████████

Docket No. 2013-21962 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 was held on ██████████. ██████████, ██████████, ██████████, ██████████, represented the Appellant. ██████████, ██████████, appeared and testified. ██████████, ██████████, ██████████, represented the ██████████ Mental Health Authority (CMH or Department) ██████████ ██████████ and ██████████, ██████████, ██████████, ██████████, appeared as witnesses for the Department.

**ISSUE**

Did the CMH 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 ██████ year-old female who has been diagnosed with moderate mental retardation. (Exhibit 4, 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 applicable service area.
3. The Appellant currently lives independently, with CLS supports, in an apartment right beside the CMH in ██████████, Michigan. (Exhibit 4, page 2)
4. The Appellant has a strong natural supports system, which is provided by her family. (Exhibit 4, page 2)

**Docket No. 2013-21962 CMH**  
**Decision and Order**

5. The Appellant graduated from [REDACTED] and since graduation, attends classes at [REDACTED]. The Appellant also works a janitorial job at [REDACTED] five days per week from 3:00 pm to 5:30 pm. (Exhibit 4, pages 2 and 4)
6. In [REDACTED], the Appellant had been receiving ten (10) hours per week of CLS services. When the redetermination for [REDACTED] was completed, it was determined that ten (10) hours per week of CLS was no longer justified. In addition to CLS services, the Appellant attends [REDACTED] classes three days per week at [REDACTED] which is equivalent to 18 hours of CLS. The Appellant also works the janitorial job 12.5 hours per week and has a job coaching contact 15 min per month. It was determined that a reduction in CLS hours was appropriate because many of the Appellant's CLS goals were being met through her attending the [REDACTED] program. ([REDACTED])
7. On [REDACTED], CMH sent the Appellant an Adequate Action Notice notifying her that her CLS hours would be reduced from ten (10) hours per week to four (4) hours per week, effective [REDACTED]. The Notice also contained the Appellant's rights to a Medicaid fair hearing. (Exhibit 3)
8. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Appellant's request for hearing request.

**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*

**Docket No. 2013-21962 CMH**  
**Decision and Order**

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) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

The *Medicaid Provider Manual, Mental Health/Substance Abuse*, section articulates Medicaid policy for Michigan. Its states with regard to Community Living Supports (CLS):

### **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.).

**Docket No. 2013-21962 CMH**  
**Decision and Order**

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)

**Docket No. 2013-21962 CMH**  
**Decision and Order**

- 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.

*Medicaid Provider Manual,  
Mental Health and Substance Abuse Section,  
October 1, 2012, Pages 113-114.*

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:

**Docket No. 2013-21962 CMH**  
**Decision and Order**

- 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

**Docket No. 2013-21962 CMH**  
**Decision and Order**

- 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.

*Medicaid Provider Manual,  
Mental Health and Substance Abuse Section,  
October 1, 2012, Pages 12-13.*

Moreover, in addition to requiring medical necessity, the Medicaid Provider Manual also states that B3 supports and services, such as Community Living Supports, are not intended to meet every minute of need:

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.

*Medicaid Provider Manual,  
Mental Health and Substance Abuse Section,  
October 1, 2012, Page 111  
(emphasis added by ALJ)*

**Docket No. 2013-21962 CMH**  
**Decision and Order**

The [REDACTED] testified that she is a licensed [REDACTED] and has worked with the Appellant for a bit over two years. The [REDACTED] indicated that in her role she completes the Appellant's Plan of Service following periodic meetings with the Appellant, determines the Appellant's needs, and monitors the Appellant's progress. The [REDACTED] testified that the Appellant attends [REDACTED] classes three days per week at [REDACTED] which is equivalent to 18 hours of CLS. The Appellant also works the janitorial job 12.5 hours per week and has a job coaching contact 15 minutes per month. The level of service was evaluated to determine what services and activities would advance the B3 goals as well as for medical necessity. It was determined that a reduction in CLS hours was appropriate because many of the Appellant's CLS goals of community inclusion and participation were being met through her attending the [REDACTED] program. The 4 hours of CLS could include some social activities, but primarily would help with the B3 goals of being independent in her apartment, which includes guidance and direction activities like shopping, cooking, money management, and household care. [REDACTED] Testimony) With some clarification from the Appellant, it was noted that when the [REDACTED] first started working with the Appellant she was only going to [REDACTED] one day per week. (Appellant and [REDACTED] Testimony)

The [REDACTED] testified that he is a fully [REDACTED] and he reviewed this case for appropriate service utilization. The [REDACTED] testified that he concurred with the findings of the [REDACTED] [REDACTED] Testimony)

The Appellant disagrees with the reduction to her CLS hours. The [REDACTED] explained that the Appellant does not feel the 4 hours of CLS meets her needs. The Appellant relies heavily on her support worker for assistance in her apartment with cleaning, shopping, laundry, and budgeting but also for social things not held during the day that she would like to attend. The [REDACTED] read a letter from the Appellant regarding the cut to her CLS hours. In part, the letter indicated people who need help are having their hours cut. The identified needs included help with cleaning and having fun. The Appellant noted that case workers help clients not have to go to parents every time they need a ride or to have fun. [REDACTED] Testimony)

The Appellant bears the burden of proving by a preponderance of the evidence that the four (4) hours per week of CLS hours authorized would be inadequate to reasonably achieve the Appellant's goals. Based on the evidence presented, Appellant has failed to meet that burden. Four (4) CLS hours per week should be sufficient to help Appellant become more integrated with the community and work on the independence related goals, especially given that Appellant will also be working on those goals during the significant hours per week she is attending the [REDACTED] program. Further, the [REDACTED] Individual Plan of Service Meeting report indicates the Appellant has a strong natural supports system. (Exhibit 4) While this ALJ understands it is not always a client's preference to have to call parents or other family members for ride or to go have fun, CLS is a B3 service and, as such, is 'not intended to meet all the



**Docket No. 2013-21962 CMH**  
**Decision and Order**

individual's needs and preferences, as some needs may be better met by community and other natural supports." (*Medicaid Provider Manual, Mental Health and Substance Abuse Section*, October 1, 2012, page 111)

**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**.

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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.