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:

Docket No. 2013-2577 CMH
Case No

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 on . Attorney appeared on behalf of the Appellant. Appellant also appeared and provided testimony. , Appellant's and , Appellant's appeared as witnesses for the Appellant.

Attorneys and , along with , Fair Hearings Officer, represented Network180, the mental health authority for Kent County Michigan (CMH or Network180). , Ombudsperson; , Supports Coordinator; , Assistant Director, Spectrum Community Services; , Population Director; , Supports Coordinator; and , Independent Reviewer, appeared as witnesses for the Department.

ISSUE

Did the CMH properly deny Appellant's request for an increase in Community Living Supports (CLS)?

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 Medicaid beneficiary, born , who is diagnosed with Anxiety Disorder NOS; Psychotic Disorder, NOS; Moderate Mental Retardation; Down's Syndrome; Hypothyroidism, Obesity, Atrioventricular Septal Defect; and Hypersomnia. (Exhibit J, p 4; Testimony).

2. Appellant requires 24 hour monitoring to maintain her health and safety due to a lack of independent safety skills. (Exhibits D, J, I; Testimony).

3. Network180 is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

4. Since , Appellant has lived in a with two other who also have developmental disabilities. The other side of the is occupied by who likewise have developmental disabilities. Prior to this move, Appellant lived at with her (Testimony; Exhibit J, p 3).

5. Staff is not present at the between the hours of , . (Exhibit J, p 4; Testimony).

6. Appellant's natural supports consist of her and her who also live in the area. (Testimony; Exhibit J, p 2).

7. Appellant attends special education classes through and may continue to attend school until she turns years old. (Exhibit J, p 8; Testimony).

8. On , Appellant was assessed for Community Living Supports (CLS) by , Supports Coordinator. met with the family, discussed Appellant's needs, discussed why Appellant transferred to Network180, and discussed Appellant's planned move to the duplex. reviewed Appellant's Social Work Assessment from Thresholds, her previous provider, and Appellant's prior PCP. (Exhibits C and D). then completed a CLS – Behavioral Support Needs Worksheet (CLS Worksheet). determined that Appellant was eligible for a daily level of CLS services and that Appellant's behavioral needs were low. (Testimony, Exhibit F).

9. Following Appellant's move into the in , Appellant's asserted to Network180 that the CLS allocated to Appellant was insufficient because Appellant would be left alone when she was not in because of , , or days when she is A meeting was held with Network180 on to discuss the issue, but no resolution was reached. (Exhibit 1; Testimony).

10. In , Appellant requested a reconsideration of the CLS assessment. (Exhibit H, p 5; Testimony).

11. On , , an Independent Reviewer hired by Network180, reassessed Appellant's CLS needs and determined that the

current CLS allocated was sufficient to meet her needs. (Exhibit I; Testimony) also reviewed Appellant's social assessment and PCP prior to completing a CLS Worksheet. (Testimony).

12. In Appellant and her participated with Spectrum Community Services (Spectrum) in the person-centered planning process. As part of that process, a new behavioral needs assessment was conducted on . Spectrum's support coordinator determined that Appellant would receive the same daily rate of CLS, specifically $ per day. (Exhibits B, N; Testimony).

13. Appellant's refused to sign the Individual Service Budget contained within the July PCP because she still disagreed with the amount of CLS allocated to Appellant. (Exhibit N, p 1; Testimony).

14. Appellant receives a daily level of CLS, which amounts to $ per day or $ per year, through self determination. (Exhibit N, p 1; Testimony).

15. All of the residents of the pool their CLS into one pot out of which the CLS staff is paid. (Testimony).

16. Network180 never sent Appellant an Adequate Action Notice following the denial of her repeated requests for an increase in CLS. (Testimony).

17. Network180's budget for the developmentally disabled (DD) community was significantly overspent in the last fiscal year. (Testimony).

18. The Michigan Administrative Hearing System received Appellant's request for hearing on . (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 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. BABHA contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are 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.*

The *Medicaid Provider Manual (MPM), Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan.

The MPM states with regard to medical necessity:

> **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.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

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.

Medicaid Provider Manual,
Mental Health and Substance Abuse Section,
, Pages 12-14.

The MPM 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. (Underline emphasis added by ALJ).

Medicaid Provider Manual,
Mental Health and Substance Abuse Section,
[REDACTED], Pages 113-114.

The Medicaid Provider Manual explicitly states that recipients of B3 supports and services, the category of services for which Appellant is eligible, is not intended to meet every minute of need for beneficiaries:

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. (Emphasis added).

Medicaid Provider Manual
Mental Health and Substance Abuse Section,
, Page 111

Respondent's Population Director testified that she manages services for adults with disabilities at Network180 and, in that capacity, also manages the budget. Respondent's Population Director testified that Network180 receives a fixed amount of Medicaid dollars from the State each year and that Network180 was over budget by $

Respondent's Ombudsperson testified that she has worked for Network180 for as the Ombudsperson in the developmental disability area. Respondent's Ombudsperson testified that Network180 ensures that beneficiaries are connected with the appropriate community services and that Network180 acts as an access and screening center, with services actually being provided by outside contractors. Respondent's Ombudsperson testified that beneficiaries can choose their own supports coordinator and that Network180 is held to the same guidelines as other mental health providers in the State.

Respondent's Ombudsperson testified that the Person Centered Planning (PCP) process is driven by the needs and desires of the person seeking services and guides the amount, duration, and scope of services the beneficiary receives for the year. Respondent's Ombudsperson indicated that the PCP can include goals that are not covered by Medicaid. Respondent's Ombudsperson testified that during the PCP process, consideration is given to where the beneficiary would like to live, that beneficiaries are free to choose where they would like to live, but that consideration must be given to whether they have the resources to actually live there.

Respondent's Ombudsperson testified that CLS services are B3 services and that the goals of those services are to increase independence, productivity, community inclusion, and socialization. Respondent's Ombudsperson indicated that there are five contract providers for CLS, or beneficiaries can choose to utilize self-direction, where they choose their own provider. Here, Appellant chose Spectrum Community Services to be her CLS provider through self-direction. Respondent's Ombudsperson testified that when utilizing self-direction, Appellant can determine when staff is available to assist her.

Respondent's Ombudsperson testified that the supports coordinator determines the amount of CLS an individual receives if CLS meets one of the goals in the PCP. Respondent's Ombudsperson indicated that supports coordinators receive training and use a CLS – Behavioral Support Needs Worksheet (CLS Worksheet) prepared by Network180 to assist in determining the amount of CLS a beneficiary receives. The supports coordinators then train the providers on the use of the CLS Worksheet. (Exhibit P). Respondent's Ombudsperson testified that the CLS Worksheet was developed so that everyone seeking CLS is assessed in the same way and so that the process is even and fair. Respondent's Ombudsperson testified that Network180 seeks to make sure all providers are using the CLS Worksheet in a consistent fashion by having weekly meetings with the providers where the CLS Worksheets are reviewed for persons with intensive needs, like the Appellant. Respondent's Ombudsperson testified that recipients of daily CLS fall into either the low, medium, or high behavioral category and that each category has a corresponding daily rate for CLS services.

Respondent's Ombudsperson testified that in an emergency or a crisis, beneficiaries can get more than the daily level of CLS and that the increase will continue until the emergency is addressed. Respondent's Ombudsperson opined that in Appellant's case, her being alone is not an emergency but part of the routine planning in the PCP process. Respondent's Ombudsperson reviewed the CLS Worksheets completed in Appellant's case. Respondent's Ombudsperson testified that she agrees that Appellant needs 24 hour supervision, but that supervision is not a Medicaid covered service.

, Supports Coordinator (Respondent's Supports Coordinator) testified that she has been a Supports Coordinator at Spectrum for five years, that she has a of arts degree and a . Respondent's Supports Coordinator testified she met Appellant and her family when Appellant transferred to her office in Respondent's Supports Coordinator testified that she met with the family, discussed Appellant's needs, discussed why Appellant transferred, and discussed Appellant's planned move to the Respondent's Supports Coordinator testified that she reviewed Exhibit C, Appellant's Social Work Assessment from Thresholds, her previous provider, as well as Exhibit D, Appellant's prior PCP, prior to meeting Appellant. Respondent's Supports Coordinator testified that she added an Addendum to Appellant's PCP on to add CLS.

Respondent's Supports Coordinator reviewed Exhibit F, the CLS Worksheet that she prepared for Appellant. Respondent's Supports Coordinator testified that Appellant scored a total of 14, which placed her in the "low" behavioral needs range. Respondent's Supports Coordinator testified that she had brought the CLS Worksheet to the meeting with Appellant and her family and asked questions about Appellant's behavior. Respondent's Supports Coordinator testified that she was trained on how to use the CLS Worksheet at Network180 and that ongoing trainings are done at Spectrum. Respondent's Supports Coordinator testified that she has completed CLS Worksheets for other recipients and has had other recipients who have scored higher than Appellant. Respondent's Supports Coordinator indicated that those recipients usually had behaviors consisting of property destruction, physical aggression, and running away. Respondent's Supports Coordinator admitted that Appellant has thrown things at people in the past, but that it only occurred on two occasions. Respondent's Supports Coordinator testified that she thought she was stretching to get Appellant to the daily rate for CLS, but that the family had requested it and she wanted to get it for them.

Respondent's Supports Coordinator testified that she developed a good relationship with Appellant over time, but that when they first met Appellant wanted nothing to do with her. Respondent's Supports Coordinator testified that Appellant could not go into the community alone because she would be vulnerable to others. Respondent's Supports Coordinator testified that when Appellant's [redacted] requested a new PCP be completed, she informed Appellant's [redacted] that a new PCP (with new goals) would not change the amount of CLS because the amount of CLS was based on Appellant's behavioral needs.

[redacted], Independent Supports Coordinator, (Respondent's Independent Supports Coordinator) testified that he worked for [redacted] for [redacted] as both a Supports Coordinator and a Clinical Coordinator and now works as an independent reviewer for Network180 when they receive CLS Worksheet reconsideration requests. Respondent's Independent Supports Coordinator testified that he has worked with numerous folks with developmental disabilities over the years. Respondent's Independent Supports Coordinator testified that in conducting an independent review of Appellant's CLS needs, he reviewed Appellant's social assessment and PCP. Respondent's Independent Supports Coordinator testified that his review also found that Appellant placed in the "low" behavioral needs range on the CLS Worksheet. Respondent's Independent Supports Coordinator testified that he has completed the review process for persons who scored higher than Appellant on the behavioral needs scale and that those persons were usually more at risk for causing serious physical or property damage and that such behaviors occurred more frequently. Respondent's Independent Supports Coordinator testified that he had some doubt about whether Appellant qualified for the daily level of CLS, but thought the daily level of CLS would

give staff a better chance to evaluate Appellant. Respondent's Independent Supports Coordinator testified that he never met Appellant, that some goals, like volunteering, would not factor into the scoring on the CLS Worksheet, and that monitoring is not a CLS goal.

, Appellant's current Supports Coordinator (Appellant's Current Supports Coordinator) testified that he is a Supports Coordinator at Spectrum and has been Appellant's Supports Coordinator since . Appellant's Current Supports Coordinator testified that he has a degree in early childhood development and that he has been a Supports Coordinator for . Appellant's Current Supports Coordinator testified that he reviewed Appellant's social assessment and went through Appellant's most recent PCP process in . Appellant's Current Supports Coordinator testified that he completed Appellant's most recent Year End Review (Exhibit M), her latest Individual Service Budget (Exhibit N), and the CLS Worksheet found at Exhibit B. Appellant's Current Supports Coordinator testified that he has been trained at Network180 in how to complete the CLS Worksheet and that the CLS Worksheets are discussed at weekly staff meetings. Appellant's Current Supports Coordinator testified that he had some concern about Appellant being eligible for the daily rate of CLS, but wanted to give her the benefit of the doubt because she was new to Network180.

Appellant's Current Supports Coordinator testified that in terms of the behavioral supports needed the goals of independence and productivity do not affect the scoring in the CLS Worksheet. Appellant's Current Supports Coordinator testified that Appellant's CLS log sheets are completed by the CLS workers and that the logged entries are appropriate activities for Appellant's PCP goals. Appellant's Current Supports Coordinator testified that Exhibit O is an Addendum to Appellant's POS that he prepared to make sure that Appellant and her realized that Network180 was providing enhanced staffing for the summer. Appellant's refused to sign Exhibit O.

Appellant testified that she has lived in the for about , that she likes it there, that she wishes to be independent, and that it is a nice break from her Appellant testified that she has and that there is usually one staff member at the house. Appellant testified that she likes to listen to her and play Appellant indicated that she and her have chores and that they do the cooking in the home. Appellant testified that she takes the bus to and from school each day school is in session, that she likes to go to the and that she does not like loud noises. Appellant testified that she wants to be a be independent, and get married some day.

Appellant's testified that she has a durable of for Appellant and is her representative Appellant's testified that Appellant pays her out of her Appellant's testified that Appellant was born in , Michigan, that she was born with Down's Syndrome and congenital heart disease.

Appellant's testified that Appellant is also diagnosed with moderate mental retardation, an anxiety disorder, an eating disorder, and a sleep disorder. Appellant's testified that Appellant has trouble falling asleep, but that once she is asleep it is very difficult to wake her up. Appellant's testified that Appellant can read, but that her comprehension is lacking. Appellant's indicated that Appellant did better in than she did in . In Appellant began to isolate herself and had imaginary friends. Appellant's testified that Appellant had few friends or activities outside of Appellant's testified that Appellant has worked at and the through a program at Appellant's testified that Appellant received a of for and that she can continue until she is years old. Appellant's testified that Appellant currently attends a where she works and gets paid. Appellant's indicated that the school also works with Appellant on her activities of daily living (ADL's) and her social skills. Appellant's testified that Appellant is currently at a Appellant's indicated that Appellant became eligible for Medicaid when she turned

Appellant's testified that Appellant has been receiving services through Network180 since and that at first she just received in-home respite services. Appellant's testified that she and Appellant completed a PCP with Network180 in . Appellant's testified that Appellant was never left alone for more than 10-15 minutes. Appellant's testified that the family heard about the where Appellant ultimately moved and that Appellant liked it after visiting. Appellant's testified that they requested CLS from Network180 and that they switched providers to Spectrum because the other residents in the used Spectrum. Appellant's testified that Appellant moved into the on and that the is not in anyway. Appellant's testified that all of the in the have their own bedrooms, that the has two bathrooms, that the home is in a neighborhood, that it is convenient for the family and Appellant, and that it is on a Appellant's testified that Appellant has learned to take the ' .

Appellant's testified that the of all the in the attend a bi-monthly meeting, that the pitch in for needed items and do needed repairs to the home. Appellant's testified that the tenants do activities together, including going to the and to a . Appellant's pointed to Exhibit 5, which is a monthly calendar of the activities the tenants do. Appellant's testified that the tenants do chores, laundry and cooking; that each tenant cooks once per week and that they eat leftovers on Sunday. Appellant's testified that Appellant has been receiving CLS since she moved into the that Appellant receives the daily rate of CLS, and that all CLS monies in the duplex are pooled together. Appellant's testified that one of the first things she was told by Network180 when Appellant considered moving into the was that the house does not have each from . Staff is at the home evenings, overnight, and on weekends. Appellant's testified that she was told by

Network180 that if Appellant does not attend during the hours there is at the then the would be responsible for her Appellant's testified that at the home forced Appellant to go to one day even though she was Appellant's testified that she was told the only other option for Appellant was to move into a home where staff are present 24 hours a day.

Appellant's testified that Network 180 did provide for and that the CLS hours were paid for out of general funds. During the Appellant went to the went for and filled out with the help of CLS staff. Appellant's testified that the lets Appellant decide how much she sees them. Appellant's testified that she takes Appellant to medical appointments, shopping, to lunch and that the has had dinner at Appellant's home. Appellant's testified that after a few hours in the family home, Appellant is ready to go back to ". Appellant's testified that Appellant has definitely matured since moving into the Appellant's testified that the does not really have control over how the CLS at the is allocated because the tenants all pool their CLS. Appellant's testified that she does not know what level of CLS the other tenants in the home receive.

Before getting to the merits of the underlying appeal, Respondent's argument that this matter is not ripe because there has been no action from which to take an appeal must be addressed. The Code of Federal Regulations (CFR) affords a Medicaid beneficiary the right to a fair hearing when the Department takes an action that is a denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. *42 CFR 438.400.* Respondent argues that Appellant has been granted a daily amount of CLS services and that those services have not been suspended, reduced or denied. However, Appellant's has been requesting CLS services in addition to the daily amount since at least and Respondent has repeatedly denied this request. For Respondent to argue that this repeated denial is not a denial giving rise to the right to an appeal is disingenuous. Respondent cannot attempt to avoid a challenge to its decisions by simply not sending out an Adequate Action Notice when a consumer requests additional services and those additional services are denied. Here, there has been a denial of Appellant's request for additional CLS services and that denial does give rise to the right to a hearing.

With regard to the merits of the underlying appeal, Appellant put forth several arguments as to why her CLS is insufficient in amount, scope and duration to meet her medically necessary needs. First, Appellant argues that Respondent's system for authorizing CLS is both factually and legally insufficient. Appellant argues that the MPM requires that medical necessity for persons with developmental disabilities be based on person centered planning (PCP) and that the process used by Respondent does not take into account the PCP, the PCP is simply the receptacle for the results of the process, which culminates with the CLS – Behavioral Needs Worksheet (CLS Worksheet). Appellant argues that the CLS Worksheet and the process used to score it

are irrelevant to Appellant's needs because she did not seek CLS for behavioral needs, she sought CLS so that she could preserve her health and safety and so that she could reside in the most integrated, independent community setting. The Appellant also argues that the CLS Worksheet creates an inherent anomaly because as one's behaviors improve, the amount of CLS authorized will decrease, thereby frustrating the intent of B3 services, i.e. community integration and independence. Appellant also argues that the CLS Worksheet is not a peer reviewed tool or relied upon by mental health professionals outside of [redacted]. Finally, Appellant argues that the use of the CLS Worksheet is contrary to the MPM, which provides in Section 2.5.D, p 14, "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." (Emphasis in original.).

In response, Network180 argues that it has a mandate to use its discretion to equitably allocate the limited funds it receives from the State to provide services to all eligible persons in its service area. This equitable mandate, Respondent argues, is laid out in Section 17.2 of the MPM:

> 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. (Emphasis added)

Respondent also points out that the MPM provides that Network180 may "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." *MPM, Section 2.5.D*. The CLS process and CLS Worksheet, Respondent argues, is just such a protocol or guideline. Respondent also argues that the CLS Worksheet does take into account all of Appellant's needs because it includes the most common barriers experienced by the developmentally disabled (DD) community in achieving their B3 goals, and it also includes a catchall provision: "the prevention of other serious behavioral problems." Respondent also points out that if a consumer has more medical than behavioral problems the CLS Worksheet contains a medical assessment component, which will be used if that assessment provides a greater benefit to the consumer. Finally, Respondent argues that each of the three clinicians who completed the CLS assessment process for Appellant did so in the context of the specific and individual goals set by Appellant.

Based on the evidence presented, it is determined that Respondent's process for determining CLS services, including the CLS Worksheet, is a proper and authorized tool for determining CLS levels for the consumers Respondent serves. Contrary to Appellant's arguments, the clinicians who completed CLS assessments for Appellant did take into account the specific goals of Appellant contained in her PCP and each of the CLS assessments were reviewed by a committee, who concurred with the findings. Ultimately, Respondent does have a mandate to allocate the limited funds it receives from the State to provide services to all eligible persons in its service area and the CLS process and CLS Worksheet are acceptable tools for meeting that mandate. As indicated above, "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."

As Respondent points out, under the self-directed arrangement Appellant has chosen, she has multiple options and significant discretion regarding how she applies her budget to service allocation. Appellant can chose where to live, she can become an employer-of-record and use her budget to purchase CLS services from a qualified individual of her own choice, and pay a negotiated hourly rage, she can choose one of Network 180's panel providers and use her budget to pay the provider's rate, or she could choose a non-panel provider and pay that provider's established rate.

Ultimately, Appellant's CLS needs are based on her behavioral needs or her medical needs, not on where she chooses to live. Here, both Appellant's behavioral and medical needs are low compared to the rest of the DD community that Respondent serves. It also bears pointing out that because all of the CLS monies received by the [redacted] in the [redacted] where Appellant lives are pooled together, it is impossible to really determine whether or not the CLS services allocated to Appellant are actually being used by Appellant. It is entirely possible that some of Appellant's [redacted] do not even qualify for a daily rate of CLS services. If that is the case, Appellant's CLS services are supplementing care for her [redacted] It is also possible that some of Appellant's roommates receive a higher level of CLS services than Appellant. If that is the case, Appellant is actually receiving more CLS services than she is eligible for. Either way, Respondent has authorized an appropriate level of CLS services for Appellant based on Appellant's needs. It is up to Appellant to determine how to use those services to meet her individual needs.

Second, Appellant argues that Network180's suggestion that Appellant move into a licensed group home if she feels her CLS hours are insufficient is contrary to Medicaid policy, would be a violation of Appellant's civil rights, and would have a deleterious effect on Appellant. Appellant points out that the MPM provides that services need to be "[p]rovided in the least restrictive, most integrated setting," and that [i]npatient, residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary unsuccessful or cannot be safely provided." *MPM Section 2.5.C, p 13* Appellant argues that the duplex where she currently resides would be less restrictive and more integrated than a licensed group

home. While this may be true, Respondent's suggestion that Appellant consider a licensed group home is just that, a suggestion. As Respondent correctly points out, Appellant is free to live wherever she would like, provided that residence fits within her budget. Network180 is not forcing Appellant to move to a group home, it is simply pointing out that licensed group homes have the 24 hour staff that Appellant needs and, given her budget, Appellant may want to consider a licensed group home.

Third, Appellant takes issue with Respondent's assertion that staff cannot be present for 24-hour per day monitoring of Appellant because monitoring is not a covered CLS service. Respondent points out that staff is present in the duplex nights and weekends, so it is unclear how providing staff during the days and times Appellant is not in would convert the current staffing arrangements into monitoring. Respondent also argues that the limitation is contrary to Medicaid policy because Section 17.3.B of the MPM provides that CLS may be used for: "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." Appellant is correct that CLS services may be used for monitoring should that monitoring be necessary to preserve the health or safety of Appellant, or in order to allow Appellant to reside in the most integrated, independent community setting. As such, Respondent's repeated assertion that CLS services do not cover "monitoring" is incorrect. However, Respondent has not argued in this case, at least before this tribunal, that they do not offer 24-hour per day care. Respondent is simply arguing that it has a mandate to allocate its limited Medicaid budget as fairly as possible to the community it serves and that is what it is doing in this case.

Next, Appellant argues that Respondent cannot condition receipt of CLS hours on Appellant's family and friends providing natural supports. Respondent points to Section 17.2 of the MPM, which provides:

> 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. ....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 or 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 services and supports. (Emphasis added)

However, the Respondent is in no way conditioning Appellant's receipt of CLS services on her parent's providing natural supports. Respondent has provided, and continues to provide, Appellant with a substantial amount of CLS services. Again, Respondent is just suggesting that if Appellant wishes to remain in the [redacted] she may need to utilize natural supports to cover times when she needs [redacted] and the home has no [redacted] available.

Finally, Appellant argues that the Respondent has provided no evidence to suggest that providing Appellant the requested amount of CLS services will limit Respondent from providing services to other consumers. However, to the contrary, Respondent did provide evidence that the Medicaid budget for the DD community was significantly overspent in the last fiscal year. Appellant's argument that Respondent also needed to show specifically that the budget for B3 services was overspent is without merit. It is sufficient that Appellant demonstrated an overall budget deficit for the DD community, of which Appellant is a member.

The Appellant bears the burden of proving by a preponderance of the evidence that additional CLS services are medically necessary. Based on the foregoing analysis, Appellant has failed to meet that burden. The daily rate of CLS services granted to Appellant appears to be appropriate in amount, scope and duration to meet Appellant's medically necessary needs. If Appellant wishes to continue to reside in the [redacted] she will need to make other arrangements to provide for supervision during the hours when the home does not provide [redacted]

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Network180 properly denied Appellant's request for increased CLS services.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

/s/

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

cc:

Date Mailed: February 5, 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.