

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:

██████████,

Appellant

Docket No. 2013-33354 CMH
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.* and upon the request for a hearing filed on behalf of Appellant/Petitioner.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████, Hearings Coordinator, represented the ██████████ County Community Mental Health Authority (CMH). ██████████, Assistant Director of Community Supports, and ██████████, Self Determination Coordinator, from ██████████ appeared as witnesses for the CMH.

ISSUE

Did the CMH properly deny Appellant's request for additional 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 CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH's service area.
2. ██████████ is one of the CMH's contracted providers. (Testimony of ██████████).
3. Appellant is a ██████████ year-old female who has been receiving services through the CMH and ██████████ (Respondent's Exhibit A, page 1; Testimony of ██████████).

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4. Specifically, Appellant receives supports coordination, a fiscal intermediary, and respite services. Appellant also receives 30 hours a week of Community Living Supports (CLS). (Respondent's Exhibit A, page 6; Testimony of Appellant's representative).
5. Appellant also receives Home Help Services, with a total monthly care cost of \$ [REDACTED], through other State agencies. (Testimony of Appellant's representative; Testimony of [REDACTED]).
6. On or about [REDACTED], Appellant and her representative requested an additional 21 hours of CLS per week. (Testimony of Appellant's representative; Testimony of [REDACTED]).
7. According to Appellant's representative, they requested the additional CLS so that Appellant can have a CLS worker with her while she goes to a vocational farm two days a week. (Testimony of Appellant's representative).
8. On [REDACTED], the CMH sent Appellant written notice stating that the request for additional CLS hours was denied as the current authorization of services was sufficient in amount, scope and duration. (Petitioner's Exhibit 1, pages 3-4).
9. The Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant on [REDACTED]. (Petitioner's Exhibit 1, pages 1-4).

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

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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.]

Moreover, 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. CMHSP contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Additionally, Medicaid beneficiaries are only entitled to medically necessary 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. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

Here, the Medicaid Provider Manual (MPM) articulates the relevant policy and, with respect to CLS, it states:

17.3.B. COMMUNITY LIVING SUPPORTS

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

- Assisting (that exceeds state plan for adults), prompting, reminding, cueing, observing, guiding and/or training in the following activities:
 - > meal preparation
 - > laundry
 - > routine, seasonal, and heavy household care and maintenance
 - > activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
 - > shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in

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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, January 1, 2013 version, Mental Health and Substance Abuse Chapter, pages 113-114.]

In addition to the above policy, the MPM also describes the general criteria for authorizing B3 supports and services, such as CLS:

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and
- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and
- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and

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- Additional criteria indicated in certain B3 service definitions, as applicable.

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, January 1, 2013 version, Mental Health and Substance Abuse Chapter, page 111.]

Although, as described above, CLS may encompass a wide range of activities, it does not specifically include the type of activities requested here. Appellant's representative acknowledges that the farm Appellant attends is a vocational farm and that it is teaching vocational skills. However, teaching vocational skills is not the goal or purpose of CLS. Moreover, as noted by Respondent, other sources may be available to fund vocational training, such as Appellant's school and the Michigan Rehabilitation Services (MRS).

To the extent the additional hours would be used as CLS, Appellant's current services appear sufficient in amount, scope and duration to meet her medical needs. Appellant's representative testified that the amount of CLS Appellant receives has been appropriate in the past and that the only change since the most recent Person Centered Plan (PCP) is that Appellant switched from school to the vocational farm two days a week. While Appellant utilizes her CLS through the self-determination program and can allocate the time as she sees fit. Appellant's representative asserts that, if they used 16 hours of CLS for two days at the vocational farm as they wish, Appellant would only have 4 hours of CLS for other nights and weekends. However, Appellant's representative's

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argument was based on Appellant only receiving 20 hours a week of CLS, which she now acknowledges was a mistake. It is undisputed that Appellant receives 30 hours a week of CLS. Accordingly, Appellant could use 16 hours of CLS for two days a week at the vocational farm and still have an additional 14 hours of CLS to use on nights and weekends. The mere fact that Appellant wants to utilize her CLS in different ways does not justify an increase in services.

Appellant bears the burden of proving by a preponderance of the evidence that the CMH erred in denying her request for 21 additional CLS hours a week. Here, Appellant failed to meet that burden. CLS are not meant to provide care 24 hours a day, 7 days a week, and are only used to increase or maintain personal self-sufficiency, while facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. Here, Appellant seeks additional hours for vocational training, rather than for the stated purpose of CLS. Moreover, Appellant already receives 30 hours a week of CLS and that significant amount of time is sufficient in this case, especially given the time Appellant spends in school and her other supports.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

Date Signed: 5/29/2013

Date Mailed: 5/29/2013

cc:

[Redacted]

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***** 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.