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. 2013-15789 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 . , ARC representative, appeared on behalf of Appellant. Appellant also appeared and testified.

Attorney represented the St. Clair County Community Mental Health Authority (CMH or Department). , Care Manager; , Program Supervisor; , Administrative Support; and , PIHP Director, appeared as witnesses for the Department.

ISSUE

Did the CMH properly reduce the Appellant's 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 child psychosis unspecified active; major depressive disorder, recurrent, in partial remission; post-traumatic stress disorder; and mild mental retardation. (Exhibit 6, p 2).

2. St. Clair County Community Mental Health Authority (CMH) is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

3. Appellant currently lives by himself in an apartment. (Exhibit 6, p 2).

4. Appellant's [redacted] resides in the southern US and he has not had contact with her recently. Appellant has one [redacted] who lives in town and with whom he has periodic contact. Appellant does have a few friends who he sees on an infrequent basis. Appellant hopes to develop a greater natural support system. (Exhibit 6, p 2).

5. Appellant struggles with his own personal care needs due to his physical health. Appellant receives DHS-Home Help services for support with bathing, light housework, laundry, some shopping, and meal preparation. Appellant receives a total of 43 hours per week of Home Help services. (Exhibit 6, p 2; Testimony).

6. Appellant has no interest in returning to work or school. Appellant receives social security benefits. (Exhibit 6, p 2).

7. Following Appellant's Person Centered Plan meeting of [redacted], [redacted], Appellant's Primary Care Manager and therapist, determined that Appellant's goals could be met with four (4) CLS hours per week. Appellant had previously been receiving eight (8) CLS hours per week. (Exhibit A, p 5; Testimony).

8. On [redacted], CMH sent Appellant an Adequate Action Notice notifying him that his CLS hours would be reduced from eight (8) to four (4) hours per week. The Notice also contained Appellant's rights to a Medicaid fair hearing. (Exhibit 7).

9. The Michigan Administrative Hearing System received Appellant's request for hearing on December 3, 2012. (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, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Its states with regard to community living supports:

17.3.B. COMMUNITY LIVING SUPPORTS

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

Coverage includes:

- Assisting, reminding, observing, guiding and/or training in the following activities:

  - meal preparation
  - laundry
  - routine, seasonal, and heavy household care and maintenance
  - activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
  - shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance is needed, the beneficiary, with the help of the PIHP case manager or supports coordinator **must** request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. The PIHP case manager or supports coordinator must assist, if necessary, the beneficiary in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization amount, scope and duration of Home Help does not accurately reflect the beneficiary's needs based on findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:

- money management
- non-medical care (not requiring nurse or physician intervention)
- socialization and relationship building
- transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
- participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
- attendance at medical appointments
- acquiring or procuring goods, other than those listed under shopping, and nonmedical services

➢ Reminding, observing and/or monitoring of medication administration

➢ Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state plan Personal Care services. Transportation to medical appointments is covered by Medicaid through DHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the beneficiary receiving community living supports. (Underline emphasis added by ALJ).

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

Appellant's Case Manager testified that she is a licensed master's social worker (LMSW) and has worked with Appellant since Appellant's Case Manager indicated that in her role she creates, with Appellant's input, his Person Centered Plan (PCP), helps Appellant link with community resources and provides Appellant with

individual therapy. Appellant's Case Manager testified that she discovered during the most recent PCP planning process that Appellant was receiving 43 hours per week of Home Help services through DHS and that these services duplicated some of the services Appellant was receiving through CLS. Appellant's Case Manager testified that she determined that Appellant's goals could be met with four (4) CLS hours per week as opposed to the eight (8) CLS hours per week he had previously been receiving. Appellant's Case Manager indicated that she can add CLS hours for Appellant as needed to attend doctors appointments, given that Appellant often times needs help understanding what he is told at his doctors appointments.

The CMH's Medical Director testified that he is a PhD psychologist and oversees the CMH's Medicaid benefit program. The CMH's Medical Director testified that he concurred with the findings of Appellant's Case Manager.

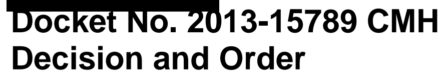
Appellant's representative testified that Appellant has severe anxiety with regard to accessing the community and that four (4) hours per week of CLS is insufficient to assist him in developing the tools necessary to better integrate into the community. Appellant's representative indicated that Appellant needs repetitive assistance in how to use the bus system, for instance. Appellant's representative also indicated that Appellant needs additional CLS hours for attending medical appointments.

The Appellant testified that some of his Home Help services hours have been cut recently and that he now gets no assistance at all for the first week and one-half of each month.

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve Appellant's goals.

Applying the facts of this case to the evidence it is determined that the four (4) CLS hours authorized are sufficient to meet Appellant's needs, especially considering the number of Home Help services hours Appellant receives each week.

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 attend any doctors appointments he has. The CMH indicated that should Appellant have a doctors appointment, but not have any CLS hours available, they would be happy to grant additional CLS hours as needed.



DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly reduced Appellant's services to four (4) CLS hours per week.

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 1, 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.