

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2013-19790 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 Appellant's request for a hearing.

After due notice, a hearing held on ██████████. ██████████, Appellant's guardian, appeared and testified on Appellant's behalf. Appellant; ██████████, Appellant's sister; ██████████, a care provider at Appellant's Adult Foster Care home; and ██████████, Appellant's case manager; also testified as witnesses for Appellant. ██████████, Fair Hearings Officer, represented the Respondent Network 180. ██████████ and ██████████ from Network 180 also testified as witnesses for Respondent.

Following the hearing, this Administrative Law Judge left the record open for one week so that the parties could submit additional evidence if they wished.

ISSUE

Did Network 180 properly deny Appellant's request for the reauthorization of Community Living Supports (CLS) through its Senior Day/CareTree program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████████ Medicaid beneficiary who has been diagnosed with Schizotypal Personality Disorder, Anxiety Disorder NOS, Intermittent Explosive Disorder, Neuroleptic-Induced Parkinsonism, and mild mental retardation. (Respondent's Exhibit C, page 1; Respondent's Exhibit I, pages 6, 9).
2. Network 180 is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in its service area. (Testimony of ██████████).

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3. Appellant has been receiving Medicaid covered services through Network 180, including targeted case management, medication reviews, personal care in a licensed setting, and Community Living Supports (CLS). (Respondent's Exhibit H, page 3).
4. Specifically, Appellant has receiving CLS both at her AFC home and through "CareTree", a day program for seniors. (Testimony of ██████████; Testimony of Appellant's Representative).
5. On or about ██████████, Appellant's case manager submitted a request for reauthorization of CLS at CareTree for Appellant for the time period of ██████████ through ██████████. (Respondent's Exhibit F, pages 1-3).
6. The request was reviewed and it was ultimately determined that Appellant did not meet the eligibility requirements for continued CLS at CareTree. Network 180 did decide, however, to authorize an additional 90 days of such services so that Appellant could transition to other services over time. (Respondent's Exhibit G, pages 1-2; Testimony of ██████████).
7. On ██████████, Network 180 sent Appellant written notice that her "Community Living Supports; Senior Day" were going to be terminated ██████████ due to a lack of medical necessity. (Respondent's Exhibit C, page 1).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Respondent's Exhibit B, page 2).

CONCLUSIONS OF LAW

In this case, Network 180 denied Appellant's request to continue receiving CLS through the Senior Day/CareTree program. As found by Respondent, Appellant was not eligible for that program because she is not authorized for Senior Case Management services or does not otherwise have an aging-related need for services. Along with that termination, Network 180 offered other services and to reassess the CLS Appellant was receiving in her home.

As a preliminary matter, this Administrative Law Judge would note that, while CLS is a Medicaid covered service, nothing in the MPM or other policy provides that CLS through a particular program is a Medicaid covered service. This Administrative Law Judge only has jurisdiction to hear matters related to a denial, reduction, termination, or suspension of a Medicaid covered service. See the Code of Federal Regulations: 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* Accordingly, whether or not Appellant is eligible for the Senior Day/CareTree program is not at issue in this case.

However, the change in Appellant's CLS may be an appealable negative action as the Michigan Medicaid Provider Manual (MPM) does identify CLS as a Medicaid covered service:

17.3.B. COMMUNITY LIVING SUPPORTS

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

Coverage includes:

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

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

duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:
 - > money management
 - > non-medical care (not requiring nurse or physician intervention)
 - > socialization and relationship building
 - > transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
 - > participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
 - > attendance at medical appointments
 - > acquiring or procuring goods, other than those listed under shopping, and non-medical services
- Reminding, observing and/or monitoring of medication administration
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

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

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a DHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help. [MPM, Mental Health and Substance Abuse Section, October 1, 2012, pages 113-114.]

Moreover, this Administrative Law Judge would also note that CLS are classified as a B3 support and service. With respect to B3 supports and services, the MPM provides, in part:

SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3s)

PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning.

17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires.

However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation/Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

Community Inclusion and Participation

The individual uses community services and participates in community activities in the same manner as the typical community citizen.

Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.) activities. A beneficiary's use of, and participation in, community activities are expected to be integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with mental retardation).

Independence

"Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent of such freedom for him/herself during person-centered planning.

For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an

apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently.

Productivity

Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness.

For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity may be successful participation in home, pre-school, or child care activities. Children under 18 would be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses. [MPM, Mental Health/Substance Abuse Services Chapter, October 1, 2012 version, pages 110-111.]

While CLS is a Medicaid covered service, Medicaid beneficiaries are also only entitled to medically necessary Medicaid covered services and the MPM does not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 C.F.R. § 440.230. Moreover, B3 supports and services, such as CLS, "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." (MPM, Mental Health/Substance Abuse Services Chapter, October 1, 2012 version, page 111).

With respect to the medically necessary services in this case, Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her request. Here, Appellant has failed to meet that burden of proof.

As testified to by Respondent's witnesses, Network 180 did not find that Appellant is ineligible for CLS and, instead, merely determined that she needs to receive it in a different place and through a different program. Additionally, ██████████ identified a number

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of other programs, including a clubhouse or a drop-in centers, that could be beneficial for Appellant. Respondent's witnesses also testified that it was willing to reassess the CLS Appellant is receiving in her home. To that end, Network 180 did not seek to immediately terminate Appellant's Senior Day CLS services and, instead, authorized those services for an additional 90 days while Appellant was to transition to her new services.

With respect to other programs or CLS in the home rather than through the day program, Appellant's guardian expressed concerned that Appellant would not be with other people or would not have adequate supervision. Similarly, Appellant's case manager and AFC provider also asserted that Appellant requires a routine and supervision. Moreover, both Appellant's representative and ██████████ testified as to how well Appellant has been doing with her current services.

However, while Appellant may be doing well with the currently-authorized services, that in no way means that she qualifies for the day program or that it is medically necessary. Respondent identified a number of other services that could meet Appellant's needs and authorized the continuation of CLS through CareTree for an additional 90 days so that Appellant and her guardian could explore those different options. It is undisputed that Appellant's guardian and witnesses have not explored the other services identified by Network 180 and it is therefore disingenuous for them to claim now that those services are insufficient.

Moreover, Appellant's representative and witnesses appear to misunderstand what services are provided through CLS in general. As described in the MPM, CLS is generally used to assist personal self-sufficiency and facilitate an individual's achievement of his goals of community inclusion, independence, and productivity. Assisting and training can occur in any number of areas, including meal preparation, laundry, household care, activities of daily living (e.g., bathing, eating, dressing, personal hygiene), shopping, money management; non-medical care; socialization, relationship building, and attendance at medical appointments.

To the extent that Appellant's representative also expressed concern that CLS would only involve Appellant working with one person, this Administrative Law Judge would also note that the 1:1 assistance can take a number of forms and Appellant can access groups or classes, while also benefitting from with the assistance of the CLS worker. Specific examples of community activities and recreation opportunities given in the MPM include attending classes, movies, concerts and events in a park, volunteering and voting. The location of CLS is also discretionary and the supports may be provided in the participant's residence or in community settings, such as libraries, city pools, camps, etc. Moreover, CLS further includes transportation to and from the beneficiary's residence to community activities.

In authorizing B3 services, "[c]are should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned." (MPM, Mental Health/Substance Abuse Services Chapter, October 1, 2012 version, page 110). Here, Appellant testified that

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she wants her services to remain the same and to continue to receive CLS through the Senior Day/CareTree program. However, the program itself is not a Medicaid covered service and Appellant's needs can be met through other programs and services offered by Network 180. She has therefore failed to meet her burden of demonstrating by a preponderance of the evidence that Network 180 erred in termination her CLS through the Senior Day/CareTree program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Network 180 properly denied Appellant's request for the reauthorization of Community Living Supports (CLS) through its Senior Day/CareTree program.

IT IS THEREFORE ORDERED that:

Network 180's decision is **AFFIRMED**.

/s/

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

cc:

Date Mailed: 03/18/2013

***** 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.