

**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. 2013-55096 CMH
Case No.

Appellant
_____/

DECISION AND ORDER

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

After due notice, a hearing was held on _____, Appellant's father and stand-by guardian, appeared and testified on Appellant's behalf. _____, Appellant's mother and plenary guardian, also testified on Appellant's behalf. Appellant was present during the hearing, but did not participate. Hearings Officer, represented Respondent _____ ("_____"). _____, _____, and _____ from _____ also testified as witnesses for Respondent.

ISSUE

Did Respondent properly decide to reduce Appellant's Community Living Supports?

FINDINGS OF FACT

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

1. _____ is under contract with the Michigan Department of Community Health (DCH) to provide Medicaid covered services to people who reside in its service area.
2. Appellant is a _____ year-old male who has been diagnosed with profound mental retardation, seizure disorder, mild cerebral palsy, and pica. (Respondent's Exhibit 1, pages 3, 9).
3. Appellant has been receiving services through _____ pursuant to the Habilitation Supports Waiver Program. (Petitioner's Exhibit B, Individual Plan of Service for _____ through _____, page 9).

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4. Specifically, Appellant is authorized for Community Living Supports (CLS), respite services, and supports coordination. (Petitioner's Exhibit B, Individual Plan of Service for _____ through _____).
5. Appellant also receives Adult Home Help Services (HHS) through another Medicaid program overseen by the DCH and the Michigan Department of Human Services (DHS). (Petitioner's Exhibit B, Individual Plan of Service for _____ through _____).
6. The same workers provide both the CLS and HHS. (Testimony of Schlisa).
7. In total, Appellant was receiving a total of 72 hours of services of CLS and HHS per week. (Petitioner's Exhibit B, Individual Plan of Service for _____ through _____).
8. Appellant's Individual Plan of Service (IPOS) did not distinguish between CLS and HHS, and instead incorrectly stated that he received 72 hours of CLS per week. (Petitioner's Exhibit B, Individual Plan of Service for _____ through _____).
9. In developing a new IPOS, _____ determined that Appellant's services should be changed. Specifically, the new IPOS stated that Appellant's CLS should be reduced to 40 hours a week. (Respondent's Exhibit 2, page 3).
10. Appellant's guardian was provided a written copy of the proposed IPOS and reduction in CLS. (Respondent's Exhibit 2).
11. On _____, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing with respect to the proposed reduction of CLS in this case. (Petitioner's Exhibit A, page 1).
12. Appellant's services have been continued at their prior level while this appeal is pending. (Testimony of Appellant's representative; Testimony of Jacobson).

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.

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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.]

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.

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

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Appellant has been receiving services, including Community Living Supports (CLS), through _____ pursuant to the Habilitation Supports Waiver Program.

With respect to the Habilitation Waiver and CLS, the applicable version of the Medicaid Provider Manual (MPM) provides:

SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to retain eligibility. Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used. The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.

HSW beneficiaries must be enrolled through the MDCH enrollment process completed by the PIHP. The enrollment process must include annual verification that the beneficiary:

- Has a developmental disability (as defined by Michigan law);
- Is Medicaid-eligible;
- Is residing in a community setting;
- If not for HSW services, would require ICF/MR level of care services; and
- Chooses to participate in the HSW in lieu of ICF/MR services.

The enrollment process also includes confirmation of changes in the beneficiary's enrollment status, including termination from the waiver, changes of residence requiring transfer of the waiver to another PIHP, and death. Termination from the HSW may occur when the beneficiary no longer meets one or more of the eligibility criteria specified above as determined by the PIHP, or does not

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receive at least one HSW service per month, or withdraws from the program voluntarily, or dies. Instructions for beneficiary enrollments and annual re-certification may be obtained from the MDCH Bureau of Community Mental Health Services. (Refer to the Directory Appendix for contact information.)

The PIHP shall use value purchasing for HSW services and supports. The PIHP shall assist beneficiaries to examine their first- and third-party resources to pursue all reimbursements to which they may be entitled, and to make use of other community resources for non-PIHP covered activities, supports or services.

Reimbursement for services rendered under the HSW is included in the PIHP capitation rate.

Beneficiaries enrolled in the HSW may not be enrolled simultaneously in any other §1915(c) waiver.

Habilitation services under the HSW are not otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973.

15.1 WAIVER SUPPORTS AND SERVICES

Community Living Supports (CLS)

Community Living Supports (CLS) facilitate an individual's independence, productivity, and promote inclusion and participation. The supports can be provided in the beneficiary's residence (licensed facility, family home, own home or apartment) and in community settings (including, but not limited to, libraries, city pools, camps, etc.), and may not supplant other waiver or state plan covered services (e.g., out-of-home nonvocational habilitation, Home Help Program, personal care in specialized residential, respite). The supports are:

- Assisting (that exceeds state plan for adults), prompting, reminding, cueing, observing, guiding and/or training the beneficiary with:
 - Meal preparation;

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- Laundry;
- Routine, seasonal, and heavy household care and maintenance (where no other party, such as a landlord or licensee, has responsibility for provision of these services);
- Activities of daily living, such as bathing, eating, dressing, personal hygiene; and
- Shopping for food and other necessities of daily living.
- Assistance, support and/or training the beneficiary with:
 - Money management;
 - Non-medical care (not requiring nurse or physician intervention);
 - Socialization and relationship building;
 - Transportation (excluding to and from medical appointments that are the responsibility of Medicaid through DHS or health plan) from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence);
 - Leisure choice and participation in regular community activities;
 - Attendance at medical appointments; and
 - Acquiring goods and/or services other than those listed under shopping and non-medical services.
- Reminding, observing, and/or monitoring of medication administration.

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The CLS do not include the costs associated with room and board. Payments for CLS may not be made, directly or indirectly, to responsible relatives (i.e., spouses or parents of minor children) or the legal guardian.

For beneficiaries living in unlicensed homes, CLS assistance with meal preparation, laundry, routine household care and maintenance, ADLs, 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 DHS's allowable parameters. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help. CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, State Plan coverage of Personal Care in Specialized Residential Settings.

If beneficiaries living in unlicensed homes need assistance with meal preparation, laundry, routine household care and maintenance, ADLs, and/or shopping, the beneficiary must request Home Help and, if necessary, Expanded Home Help from 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 must assist with applying for Home Help or submitting a request for a Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not accurately reflect his or her needs. 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.

Community Living Supports (CLS) provides support to a beneficiary younger than 18, and the family in the care of their child, while facilitating the child's independence and integration into the community. This service provides skill development related to activities of daily living, such as bathing, eating, dressing, personal hygiene, household chores and safety skills; and skill development to achieve or maintain mobility, sensory-motor, communication, socialization and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the child. These

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supports may serve to reinforce skills or lessons taught in school, therapy, or other settings. For children and adults up to age 26 who are enrolled in school, CLS services are not intended to supplant services provided in school or other settings or to be provided during the times when the child or adult would typically be in school but for the parent's choice to home-school. [MPM, April 1, 2013 version, Mental Health/Substance Abuse Chapter, pages 88-89 (emphasis added.)]

Here, _____ notified Appellant and Appellant's guardians that it planned to reduce Appellant's CLS from 72 hours a week to 40 hours a week.

However, that notice is clearly improper as Appellant has not been receiving 72 hours a week of CLS and will not be receiving 40 hours a week if the reduction is implemented. The 72 hours a week of services Appellant receives and the 40 hours _____ plans on having Appellant receive includes both CLS and HHS. The exact amount of CLS and HHS that Appellant receives is unclear from the record.

As described in the above policy, CLS may be used to complement HHS when the individual's needs for that assistance have been officially determined to exceed DHS's allowable parameters. Nevertheless, they remain separate services with different criteria and goals. The amount of HHS Appellant receives is also authorized by DHS, not _____.

The CLS provided by _____ is providing should be complementing Appellant's HHS while also facilitating Appellant's independence, productivity, inclusion, and participation. That may be the case here, but _____ has merged CLS and HHS to such an extent that it improperly identifies the amount of CLS that is at issue and it could not even identify the amount of HHS Appellant was receiving.

Appellant bears the ultimate burden of proof in this case, but Respondent bears the burden of production with respect to the proposed action and the reason for that action. Given the improper notice in this case regarding the proposed reduction and _____'s failure to identify or delineate the services at issue in this case, _____ has failed to meet that burden and this Administrative Law Judge is unable to affirm its decision at this time. Accordingly, that decision is reversed.

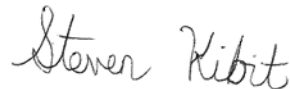
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that _____ improperly decided to reduce Appellant's CLS.

IT IS THEREFORE ORDERED that:

Respondent's decision to reduce Appellant's CLS is **REVERSED**.



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

Date Signed: 9/10/2013

Date Mailed: 9/10/2013

cc:

***** 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.