

**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. ██████████ CMH
Case No. ██████████

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 ██████████. ██████████ father, appeared and testified on Appellant's behalf.

██████████ represented the ██████████ Mental Health Authority (CMH or Department). ██████████, ██████████ and ██████████, 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, ██████████, who is diagnosed with moderate mental retardation and ██████████. Appellant is prescribed the medications Felvatol, Lamictal, and Topomax for seizure control. (Exhibit 8, p 2).
2. ██████████ 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. (Testimony)
3. Appellant currently lives with her mother in ██████████ Michigan. (Exhibit 8, p 2).
4. Appellant has strong family support from both of her parents and her extended family, including grandparents, aunts, uncles, cousins, etc. (Exhibit 8, p 2)

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5. Appellant graduated from [REDACTED] in [REDACTED] and since graduation has been attending [REDACTED] five (5) days per week for six (6) hours per day. (Exhibit 8, p 1; Testimony)
6. On [REDACTED], an Individual Plan of Service Amendment was completed. Appellant's CLS hours were reduced from ten (10) hours per week to three (3) hours per week because Appellant was attending [REDACTED] five (5) days per week for six (6) hours per day. CMH staff believed that a reduction in CLS hours was appropriate because many of Appellant's CLS goals were being met through her attending [REDACTED]. (Exhibit 5, pp 1-4; Testimony)
7. On [REDACTED], CMH sent Appellant an Adequate Action Notice notifying her that her CLS hours would be reduced from ten (10) hours per week to three (3) hours per week, effective [REDACTED]. The Notice also contained Appellant's rights to a Medicaid fair hearing. (Exhibit 6).
8. The Michigan Administrative Hearing System received Appellant's request for hearing on [REDACTED]. (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.

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. CMH 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 (CLS):

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,
October 1, 2012, Pages 113-114.*

Appellant's [REDACTED] testified that she is a licensed [REDACTED] and has worked with Appellant since [REDACTED]. Appellant's [REDACTED] indicated that in her role she completes Appellant's Plan of Service following periodic meetings with Appellant and her family, determines Appellant's needs, and monitors Appellant's progress. Appellant's [REDACTED] testified that after Appellant graduated from [REDACTED], she started attending [REDACTED] () 5 days per week for 6 hours per day. Appellant's [REDACTED] testified that she believed that many of Appellant's CLS goals would be met through [REDACTED] so she reduced Appellant's CLS hours from ten (10) hours per week to three (3) hours per week. Specifically, Appellant's [REDACTED] testified that the CLS goals of socialization and community inclusion were met through [REDACTED]. Appellant's [REDACTED] indicated that in making the decision to reduce Appellant's CLS hours she considered Appellant's mental age and her safety in the community.

The CMH's [REDACTED] testified that he is a [REDACTED] and oversees the CMH's Medicaid benefit program. The CMH's [REDACTED] testified that he concurred with the findings of Appellant's [REDACTED].

Appellant's father testified that he does not think Appellant is safe at [REDACTED] because there is not enough supervision. Appellant's father indicated that it would be very easy for Appellant to be out of sight of supervision at [REDACTED] and be taken advantage of. Appellant's father testified that the [REDACTED] worker who had been working with Appellant was working with her on developing safety skills in the community, especially with regard to interacting with males. Appellant's father testified that he wished for Appellant's CLS hours to be restored to ten (10) hours per week.

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 three (3) CLS hours

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authorized are sufficient to meet Appellant's CLS goals, especially considering the number of hours Appellant attends ██████ each week.

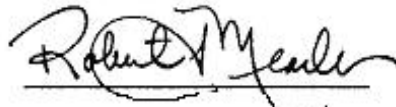
The Appellant bears the burden of proving by a preponderance of the evidence that the three (3) hours per week of CLS hours authorized would be inadequate to reasonably achieve the Appellant's goals. Based on the evidence presented, Appellant has failed to meet that burden. Three (3) CLS hours per week should be sufficient to help Appellant become more integrated with the community and work on her safety skills, especially given that Appellant will also be working on those goals during the 30 hours per week she is attending ██████. It should also be noted that since the filing of this appeal, Appellant has been approved for four (4) CLS hours per week.

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 CLS to three (3) hours per week.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



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

cc:

██████████
██████████
██████████
██████████
██████████

Date Mailed: _____

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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.