

**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.** 14-005311 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 was held on ██████████. ██████████ appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████, Customer Service Representative, appeared and testified on behalf of Respondent Community Mental Health Services of Muskegon County ("CMHS").

**ISSUE**

Did CMHS properly reduce and then terminate 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. CMHS is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services.
2. Appellant is a ██████ year-old male who has been diagnosed with generalized anxiety disorder and is receiving services through CMHS. (Respondent's Exhibit 7, pages 1, 3).
3. Among the services Appellant was receiving was two (2) hours per week of CLS. (Testimony of Appellant).
4. On ██████████, CMHS sent Appellant written notice that his CLS would be reduced on ██████████ because the "Service is not medically necessary". (Respondent's Exhibit 2, page 1).
5. The notice of reduction did not identify what Appellant's CLS were being reduced to or state that the services would be terminated at a later date.

(Respondent's Exhibit 2, page 1).

6. However, Appellant was verbally informed that he would receive one (1) hour of CLS per week through ██████████ and that his CLS would then end on that date. (Testimony of Appellant; Testimony of Pyne).
7. On ██████████, the reduction took effect. (Testimony of Appellant; Testimony of Pyne).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this case. (Petitioner's Exhibit A, pages 1-2).
9. On ██████████, CMHS terminated Appellant's CLS. (Testimony of Appellant; Testimony of Pyne).

### **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*

Additionally, 42 CFR 430.10 states:

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 also 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...

*42 USC 1396n(b)*

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.

Among the services that can be provided pursuant to that waiver are CLS and, with respect to those services, the Medicaid Provider Manual (MPM) 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 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

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- 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.

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 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, 2014 version*  
*Mental Health/Substance Abuse Chapter, pages 114-115*

Regarding advance notice and Medicaid covered services such as CLS, the Code of Federal Regulations (CFR) provides: "The State or local agency must send a notice at least 10 days before the date of action" except in certain situations not applicable here. See 42 CFR 431.211. Moreover an action and date of action are defined as follows:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

\* \* \*

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

*42 CFR 431.201*

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Additionally, any notice sent pursuant to the above regulations must contain a statement of what action the agency intends to take; the reasons for the intended action; the specific regulations supporting or requiring the action; and an explanation of the individual's rights to appeal. See 42 CFR 431.210

Here, CMHS sent advance notice of a reduction, but it did not identify what Appellant's services were being reduced to. Moreover, it also did not notify Appellant in writing that even that reduction was only going to be temporary and that it was going to subsequently terminate Appellant's CLS as well. Accordingly, it failed to provide proper notice of the reduction and termination of Appellant's CLS as required by the above regulations and its actions must therefore be reversed.

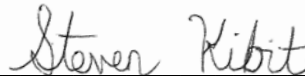
To the extent CMHS still wishes to reduce or terminate Appellant's services, it may send out new and proper advance notice of that decision. Appellant would then have an opportunity to file a new request for hearing and, if necessary, another administrative would be held. With respect to the decision at issue in this case, however, CMHS' actions must be reversed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH improperly reduced and then terminated Appellant's CLS.

**IT IS THEREFORE ORDERED** that:

The Respondent's decision is **REVERSED** and it must reinstate Appellant's CLS to two hours per week.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK [REDACTED]

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.