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:

[redacted]

Docket No. 2014-10922 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], [redacted] of [redacted] County, appeared on behalf of Appellant. Appellant also appeared and testified on his own behalf. Appellant's witnesses were [redacted], mother and [redacted], stepfather.

Attorney [redacted] represented the [redacted] County Community Mental Health Authority (CMH or Department). [redacted], Supports Coordinator; and Dr. [redacted], Care Management Director, appeared as witnesses for the Department.

ISSUE

Did the CMH properly deny Appellant's request for additional 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. Appellant is a [redacted] year old Medicaid beneficiary, born [redacted], who is diagnosed with moderate mental retardation, Lennox-Gastaut Syndrome (seizure disorder), and other psychosocial and environmental problems. (Exhibit 3, p 1; Testimony)

2. Appellant is prescribed Lyrica, Klonopin, Keppra and Felbatol for his seizure disorder. Appellant also takes Lorazapam during seizures to control them. (Exhibit 3, p 2; Testimony)

3. [redacted] 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. (Testimony)

4. Appellant currently lives with his mother and step-father and has regular contact with his brother [redacted]. (Exhibit 3, p 2; Testimony)

5. Appellant has a stated goal of living in his own apartment with friends. (Exhibit 3, p 2; Testimony)

6. Appellant requires no assistance with toileting, eating, ambulation or transferring, however, he does require assistance with bathing, dressing, grooming, medication administration, medical management, laundry, house-keeping, bill paying, leisure/recreation activities and community access. Appellant receives $[redacted] per month in Home Help Services for which his mother is the paid provider. (Exhibit 3, p 2; Testimony)

7. Appellant attends school full-time at [redacted] Developmental Center and plans to continue in school until his eligibility runs out at age 26. (Exhibit 3, p 2; Testimony)

8. At a periodic review of Appellant's Individual Plan of Service on [redacted], Appellant and his family requested supported housing in a private residence with another peer. Appellant's family has purchased a house about 1 mile away from the family home and hopes for Appellant to live there with a peer and for the family to hire staff for the house through self-determination. (Exhibit 4, p 1; Testimony)

9. CMH completed a service determination request as it relates to a 24 hour per day / 7 day per week support request and determined that it could only justify 5 additional CLS hours per week as medically necessary and advancing a B3 goal. (Exhibit 1, p 1; Exhibit 4; Exhibit 7; Testimony)

10. On [redacted], CMH sent Appellant an Adequate Action Notice notifying him of the results of the periodic review. The Notice also contained Appellant's rights to a Medicaid fair hearing. (Exhibit 7).

11. 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.
>
> *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,
October 1, 2013, Pages 114-115

The Medicaid Provider Manual also explicitly states that recipients of B3 supports and services, the category of services for which Appellant is eligible, is not intended to meet every minute of need:

Decisions regarding the authorization of a B3 service (including the amount, scope and duration) must take into account the PIHP's documented capacity to reasonably and equitably serve other Medicaid beneficiaries who also have needs for these services. <u>The B3 supports and services 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</u>. <u>Natural supports mean unpaid assistance provided to the beneficiary by people in his/her network (family, friends, neighbors, community volunteers) who are willing and able to provide such assistance</u>. It is reasonable to expect that parents of minor children with disabilities

> will provide the same level of care they would provide to their children without disabilities. MDCH encourages the use of natural supports to assist in meeting an individual's needs to the extent that the family or friends who provide the natural supports are willing and able to provide this assistance. PIHPs may not require a beneficiary's natural support network to provide such assistance as a condition for receiving specialty mental health supports and services. The use of natural supports must be documented in the beneficiary's individual plan of service. (Emphasis added).
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> *Medicaid Provider Manual,*
> *Mental Health and Substance Abuse Section,*
> *October 1, 2013, Page 112*

Appellant's supports coordinator testified that she is a Licensed Bachelor Social Worker (LBSW) and has worked with Appellant and his family for the past 5 years. Appellant's supports coordinator indicated that during an Individual Plan of Service (IPOS) review in [redacted], Appellant and his family expressed a desire for 24 hour supports and services so that Appellant could live in his own home with roommates. Appellant's supports coordinator testified that she followed the CMH's decision process guide and determined that CMH could only approve 5 additional hours of CLS at the time. Appellant's supports coordinator reviewed a draft schedule prepared for Appellant (Exhibit 6) and the Service Determination Worksheets (Exhibit 7) she prepared in working through Appellant's request. Appellant's supports coordinator indicated that much of the time Appellant's family was seeking through CLS hours was actually time allocated for monitoring Appellant's health and safety in the new home. Appellant's supports coordinator determined that, while Appellant certainly has a need to be supervised in the home, supervision or monitoring is not medically necessary, not a covered service, and not designed to advance a B3 goal of community inclusion and participation, or independence, or productivity. Appellant's supports coordinator also testified that Appellant's family would not commit to any time for informal supports, so she could not quantify what amount of Appellant's needs could be met through informal supports.

The CMH's Care Management Director testified that he is a PhD psychologist and oversees the CMH's Medicaid benefit program. The CMH's Care Management Director indicated that B3 services need to take place in the community for them to be covered and B3 services would not cover supervision in the home. The CMH's Care Management Director testified that if supervision were found to be a covered B3 service, the CMH would be unable to serve all of the members that it has. The CMH's Care Management Director testified that Appellant's desire to live on his own can certainly be a long-term goal, but that at present Appellant has no functional ability to navigate the community on his own. The CMH's Medical Director testified that he concurred with the findings of Appellant's supports coordinator.

Appellant testified that he wishes to live in his own home with two friends.

Appellant's mother reviewed Appellant's diagnoses and the steps the family has taken to treat Appellant's disease. Appellant's mother testified that they do not leave Appellant alone because he would not know what to do in an emergency and how to deal with strangers. Appellant's mother indicated that Appellant does have the ability to learn things, but learning for Appellant takes a long time and requires a lot of repetition. Appellant's mother indicated that Appellant currently lives with her and his stepfather and that she retired in order to take care of Appellant. Appellant's mother testified that the family is looking for two other persons with special needs to live with Appellant so that they could pool their resources and services to cover 24 hours a day.

The CMH is mandated by federal regulation to perform an assessment for Appellant to determine what Medicaid services are medically necessary and determine the amount or level of services that are needed to reasonably achieve Appellant's goals. Applying the facts of this case to the evidence it is determined that the CMH was proper in denying Appellant 24/7 CLS services and that the CLS hours authorized are sufficient to meet Appellant's needs.

Appellant bears the burden of proving by a preponderance of the evidence that the CLS hours authorized would be inadequate to reasonably achieve Appellant's goals. Based on the evidence presented, Appellant has failed to meet that burden. The CLS hours as authorized should be sufficient to help Appellant meet his service goals of community inclusion and participation, independence, and productivity. As indicated above, CLS hours are not intended to meet all of a person's needs, natural and informal supports must be considered, and the CMH must take into account its ability to equitably serve all members in the area. Here, Appellant's mother has retired in order to care for Appellant, so clearly she could provide some natural supports should Appellant move to an apartment with roommates. In addition, the CMH has indicated that if they were required to offer CLS for supervision of clients, it would not be able to equitably serve all of its customers. Finally, the hours authorized are sufficient to meet Appellant's goals, as indicated in the Service Determination Worksheets found in Exhibit 7.

Appellant's argument that the B3 goal of independence includes supervision if that supervision is designed to provide safety in the community is not convincing because when someone is in their own home, they are not "in the community". Of course, CLS hours can be used in the home to train Appellant in how to live more independently, but this is different than simple monitoring of Appellant in the home with no teaching or training going on. As the CMH correctly pointed out, the goal of independence means that someone is able to live on their own – not that someone is able to live on their own with supervision. Hopefully, the parties can continue to work towards an arrangement where Appellant is able to live on his own with roommates, with the assistance of the informal supports Appellant is lucky enough to have available to him, but at this time, CMH's determination to deny 24/7 CLS hours was appropriate.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Appellant's request for 24/7 CLS hours and properly determined the amount of CLS hours necessary to meet Appellant's goals.

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: [redacted]

Date Signed: February 18, 2014

Date Mailed: February 18, 2014

***** 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.