

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. 2014-15174 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 request for hearing filed on behalf of Appellant.

After due notice, an in-person 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 ██████████ (CMH or ██████████). ██████████, Developmental Disability (DD) Services Supervisor; ██████████, DD Service Manager; and ██████████, Utilization Management Specialist from ██████████ also testified as witnesses for Respondent.

ISSUE

Did Respondent properly decide to reduce 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. ██████████ 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 Medicaid beneficiary, born ██████████, who has been diagnosed with profound mental retardation, seizure disorder, mild cerebral palsy, and pica. (Exhibit A; Testimony)
3. Appellant has been receiving services through ██████████ pursuant to the Habilitation Supports Waiver Program. (Exhibit A; Testimony).

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4. Specifically, Appellant is authorized for Community Living Supports (CLS), respite services, and supports coordination. (Exhibit A; Testimony)
5. At the time of his request for hearing, Appellant was also receiving 19 hours of Adult Home Help Services (HHS) per week through another Medicaid program overseen by the Michigan Department of Human Services (DHS). (Exhibit A, p 3; Testimony)
6. The same workers provide both the CLS and HHS. (Exhibit A, p 1; Testimony)
7. In total, Appellant was receiving 53 CLS hours per week. (Exhibit A; Testimony)
8. On [REDACTED], [REDACTED] completed an Individual Plan of Service Amendment and determined that Appellant's CLS goals could be met with 21 CLS hours per week. Appellant would continue to receive 19 HHS hours per week and Appellant's parents would continue to receive 256 hours of respite per year. (Exhibit A; Testimony)
9. On [REDACTED], [REDACTED] notified Appellant's parents via written notice that Appellant's CLS hours would be reduced to 21 CLS hours per week. (Exhibit C)
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing. With the hearing request, Appellant's parents submitted 17 exhibits. Appellant's parents entered one additional exhibit at the hearing. (Exhibits 1-18)
11. Recently, Appellant was approved for Expanded HHS, which increased his monthly HHS from 77 hours and 32 minutes per month to 130 hours and 47 minutes per month, effective [REDACTED]. (Testimony)

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

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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. 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 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

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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;
 - Laundry;
 - Routine, seasonal, and heavy household care and maintenance (where no other

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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.

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 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

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adult would typically be in school but for the parent's choice to home-school. [MPM, January 1, 2014 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 hours from 53 hours a week to 21 hours a week.

██████████'s DD Services Supervisor testified that she supervises the CMH's case managers, including Appellant's case manager, and also knows Appellant personally from seeing him at ██████████ over the years. ██████████'s DD Services Supervisor testified that Appellant is currently receiving supports coordination, CLS, respite, and personal care through HHS. H██████████'s DD Services Supervisor explained that the CLS program is designed to facilitate an individual's independence, productivity, and promote inclusion and participation in the community while HHS is designed to provide more hands on personal care. ██████████'s DD Services Supervisor testified that the proposal to reduce Appellant's CLS hours to 21 hours per week was made because Appellant's CLS hours were considered an outlier given that the hours were considerably higher than the 6 CLS hours per week authorized for someone at Appellant level of care (Level III) as determined by ██████████ PIHP, which oversees ██████████ and the entire ██████████.

██████████'s DD Services Supervisor testified that the decision to reduce Appellant's CLS hours was based on a review of his progress notes and treatment plan and a determination that the goals in his Person Centered Plan could be met in 21 hours per week. ██████████'s DD Services Supervisor also testified that Appellant's HHS hours were recently increased, which will cover some of the reduction in CLS. ██████████'s DD Services Supervisor testified that following a prior hearing, ██████████ had been instructed to better differentiate between what constituted CLS hours and what constituted HHS hours in Appellant's treatment, and now ██████████ had better documented those differences. Based on this documentation, ██████████'s DD Services Supervisor indicated that she determined that much of the time being allocated to CLS was not being used to pursue goals of independence and community inclusion.

██████████'s DD Services Manager testified that a "day program" had been eliminated as a covered service years ago because segregated type programs were found not to be in the best interest of customers and that a focus on integration and inclusion was better. ██████████'s DD Services Manager testified that ██████████ does have a program, called Connections, which allows consumers to participate in a social recreation program. ██████████'s DD Services Manager testified that Appellant does participate in the Connections program. ██████████'s DD Services Manager also discussed the medical necessity criteria and indicated that she concurred with the reduction in Appellant's CLS hours.

Appellant's father testified that Appellant and the family have had a long, great relationship with ██████████ and that Appellant had in fact recently been approved for Expanded HHS, which would be a great help. Appellant's father reviewed the Medical

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Necessity Criteria from the Medicaid Provider Manual (Exhibit 2) and indicated that Appellant did meet those standards for services. Appellant's father testified that he did not see how Appellant could accomplish in 21 hours per week what he had previously been doing in 53 hours per week, especially given that this year's assessments of Appellant do not reflect any changes in his condition. (Exhibits 4-7). Appellant's father also reviewed Appellant's HHS Medical Needs Form to demonstrate that Appellant's doctor has indicated that he needs 24 hour supervision. (Exhibit 12). Appellant's father testified that since CLS hours are used for skill building, Appellant should be entitled to more CLS hours so he can learn to avoid self-destructive behaviors. Appellant's father also reviewed a letter from Appellant's school, which he attended through age [REDACTED], to demonstrate how significantly Appellant can regress if he does not get continuous training. (Exhibit 17). Appellant's father indicated that if Appellant does regress, it takes a long time and a lot of training for him to get back to where he was. Appellant's father testified that continuing the current CLS hours would, at the very least, prevent Appellant from regressing and, at best, help him to advance.

Appellant's father also reviewed the hearing summary for the prior hearing, where [REDACTED] had proposed reducing Appellant's CLS to 40 hours per week. (Exhibit 18). Appellant's father indicated that he did not understand then, and does not understand now, what the proposed reduction in CLS is based upon. Appellant's father testified that he believes the reduction is budget driven because the issue of reducing Appellant's CLS hours only came up when Appellant's family decided not to place Appellant in a group home. Appellant's father testified that when they looked into the group home, they determined that Appellant would be receiving 60 hours of care per week. Appellant's father wondered why if he would be receiving 60 hours in a group home he could not get 60 hours in his own home. Appellant's father also testified that Appellant needs skill building to work on his Activities of Daily Living because he cannot do any of those things by himself.

Appellant's mother testified that because the CLS workers are supposed to carry out skill building, they should take the initiative with Appellant on what to work on, as opposed to relying on the family to make such determinations. Appellant's mother also testified that Appellant sometimes wakes up at 1:00 a.m. and is ready to start the day, so the suggestion that no care is required at night is not accurate.

In response, [REDACTED]'s DD Services Manager testified that the reduction in CLS hours was not based solely on budget issues, but rather on trying to get Appellant's CLS services in line with his mental health needs. [REDACTED]'s DD Services Manager indicated that it was not proper to use CLS hours solely for monitoring or supervision.

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. The CLS provided by [REDACTED] should be complementing Appellant's HHS while also facilitating Appellant's independence, productivity, inclusion, and participation.

Appellant bears the burden of proving by a preponderance of the evidence that the

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reduction in his CLS hours was inappropriate. Based on the evidence presented, Appellant failed to meet this burden. Here, following the most recent IPOS Amendment, ██████████ determined that 21 CLS hours per week, plus 19 HHS hours per week, for a total of 40 care hours per week, would be sufficient to meet Appellant's needs. Since that time, Appellant's HHS hours have been increased from 19 to approximately 32.5 hours per week, so his total care hours will be approximately 53.5 hours per week. ██████████'s witnesses indicated that the reduction in CLS hours was based on a review of Appellant's progress notes and treatment plan, and based on an effort to get Appellant's CLS hours in-line with his actual mental health needs. It is apparent from the evidence that previously Appellant was using significant CLS hours for monitoring and supervision, which would not be a proper use for CLS hours. It is also apparent that even with the proposed reduction in CLS hours, Appellant will still be receiving far more CLS hours than would normally be authorized for someone at Appellant's level of care. ██████████ also needs to ensure that it has the resources to meet the needs of all of the customers it serves.

Appellant's parents should be commended on the enormous support that they provide to their son. While it is clear that Appellant would benefit from additional and even unlimited services, that fact alone is not enough to overcome ██████████'s decision. ██████████'s decision is based on competent and material evidence and is supported by the record.

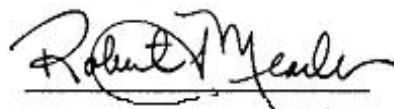
Appellant also appealed the fact that ██████████ does not provide a Day Program Site. However, while ██████████ may organize a day program site, it is under no obligation to do so. (See MPM, Mental Health/Substance Abuse Chapter, Section 2.3.A, p 10)

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

██████████


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

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Date Signed: February 27, 2014

Date Mailed: February 27, 2014

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.