

**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. 2014-21386 CMH

██████████

██████████

██████████

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 by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████ and ██████████, managers at Appellant's Adult Foster Care (AFC) home, also testified on Appellant's behalf. ██████████, Hearing Officer, represented Respondent ██████████). ██████████, Development Disability Services Manager, and ██████████, Developmental Disability Services Supervisor, testified as a witness for ██████████.

ISSUE

Did the CMH properly 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. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with cerebral palsy; major depressive disorder, recurrent; borderline personality disorder; and seizure a disorder. (Respondent's Exhibit 2, page 1; Respondent's Exhibit 3, pages 2, 13).
2. ██████████ is under contract with the Michigan Department of Community Health (MDCH) to provide specified Medicaid covered services to people who reside in its service area.
3. Appellant previously resided in ██████████ service area and was receiving services through it. (Respondent's Exhibit 3, page 24; Testimony of ██████████).

Docket No. 2014-21386 CMH
Decision and Order

4. In [REDACTED], Appellant moved to [REDACTED], an AFC home in [REDACTED] (Respondent's Exhibit 3, page 4).
5. [REDACTED] remained the responsible entity for Appellant's services after the move, but it also began to subcontract with [REDACTED] and have that entity provide direct services. (Testimony of [REDACTED]).
6. Throughout her residence at [REDACTED], Appellant has had an "AFC –Resident Care Agreement" which, among other things, indicated that the AFC agreed to community outings as needed. (Respondent's Exhibit 4, pages 1-4).
7. The agreement between the AFC Home and [REDACTED] also provides for community outings with home staff as part of the per diem rate paid by [REDACTED] and [REDACTED]. (Testimony of [REDACTED]).
8. On [REDACTED] Appellant underwent a biopsychosocial assessment at [REDACTED]. (Respondent's Exhibit 3, pages 21).
9. As found in that assessment:

[Appellant] is able to access the community in familiar areas, however, she has not always demonstrated following the "rules" with her electric wheelchair. The location of the AFC home also restricts [Appellant's] ability to participate in activities (have to cross two major highways to get into [REDACTED]).

Respondent's Exhibit 3, page 19

10. On [REDACTED] an Individual Plan of Service (IPOS) meeting was held in Appellant's home with respect to the plan for the upcoming plan year, [REDACTED] through [REDACTED]. (Respondent's Exhibit 2, pages 1-15).
11. Regarding Appellant's services, it was also noted that Appellant would receive supports coordination; up to [REDACTED] hours per week of skill-building assistance at [REDACTED]; CLS through Appellant's AFC home, and up to [REDACTED] hours per week of CLS outside of the AFC home through [REDACTED]. (Respondent's Exhibit 2, pages 3-6, 13).
12. The CLS outside of the home was to allow Appellant to participate in regular community activities, recreation, and leisure opportunities. (Respondent's Exhibit 2, page 6).

Docket No. 2014-21386 CMH
Decision and Order

13. On [REDACTED], [REDACTED] sent Appellant written notice that her [REDACTED] hours per week of CLS outside of the AFC home through [REDACTED] would be terminated effective [REDACTED]. (Respondent's Exhibit 1, pages 1-3).
14. As stated in that notice, Appellant's CLS outside of the home was being terminated because she is already able to participate in community outings through her current residential placement and the CLS was therefore duplicative and not medically necessary. (Respondent's Exhibit 1, page 1).
15. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing in this matter filed by Appellant. (Petitioner's Exhibit 1, page 1).
16. In that request, Petitioner asserts that her AFC home had received a substantial budget cut and is unable to provide 1:1 services with any regularity. (Petitioner's Exhibit 1, page 1).

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

Docket No. 2014-21386 CMH
Decision and Order

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.

Among the services that can be provided by the CMH are Community Living Supports (CLS). With respect to CLS, the applicable version of the Medicaid Provider Manual (MPM) provides:

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:

Docket No. 2014-21386 CMH
Decision and Order

- 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:

Docket No. 2014-21386 CMH
Decision and Order

- 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 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

Docket No. 2014-21386 CMH
Decision and Order

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, October 1, 2013 version
Mental Health/Substance Abuse Chapter, pages 114-115

However, while CLS are Medicaid-covered services, Medicaid beneficiaries are still only entitled to medically necessary covered services for which they are eligible and 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.

With respect to medical necessity, the MPM, October 1, 2013 version, Mental Health/Substance Abuse Chapter, pages 12-13, provides:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;

**Docket No. 2014-21386 CMH
Decision and Order**

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

In addition to medical necessity, the MPM also identifies other criteria for B3 supports and services such as CLS:

SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3S)

PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning.

17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES

The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent, guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

* * *

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and
- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and

Docket No. 2014-21386 CMH
Decision and Order

- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and
- Additional criteria indicated in certain B3 service definitions, as applicable.

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. 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. 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. 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.

Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.

MPM, October 1, 2013 version
Mental Health/Substance Abuse Chapter, pages 111-112

Here, [REDACTED] will no longer authorize CLS for Appellant outside of the AFC Home through [REDACTED] because it is duplicative of the services Appellant already receives through the AFC Home and therefore not medically necessary.

██████████
Docket No. 2014-21386 CMH
Decision and Order

Appellant bears the burden of proving by a preponderance of the evidence that the ██████████ erred in reducing her services and, for the reasons discussed below, this Administrative Law Judge finds that Appellant has not met that burden of proof.

As noted by ██████████ witnesses and undisputed by Appellant, the agreement between the AFC Home and ██████████ provides for community outings with home staff as part of the per diem rate paid by ██████████ and ██████████. Given the obligations of the AFC Home, any additional CLS services, while beneficial, are both duplicative and not medically necessary.

In response, Appellant and her witnesses do not dispute ██████████ findings. Instead, they testified that, due to recent budget cuts and staffing changes implemented at the AFC Home after the negative action notice was taken in this case, it is more difficult for Appellant to go on outings through the AFC Home due to a lack of such outings or available staff. Appellant and ██████████ also testified that, when she does go on outings, it always has to be planned in advance, unlike before, and that it is never with a staff worker one-on-one. Sargent further testified that, given the changes in the AFC Home, it is impossible for that home to satisfy its agreements with Appellant and ██████████.

However, this Administrative Law Judge is limited to reviewing ██████████ decision to reduce Appellant's CLS in light of the information it had at the time it made that decision and any subsequent events, such as budget cuts affecting the provision of services, are immaterial to this action.

Moreover, while the outings through the AFC Home would not always be just for Appellant and may have to plan in advance, the services are sufficient to meet Appellant's needs, especially in light of the above policy stating that decisions regarding the authorization of a B3 services, including CLS, must take into account the authorizing entity's capacity to reasonably and equitably serve other Medicaid beneficiaries who also have need for these services.

To the extent Appellant's circumstances have changed since the negative action was taken, she is free to request additional services. As noted by ██████████ Appellant's IPOS is a fluid document and it can be reassessed and adjusted as needed. ██████████ also noted that ██████████ or ██████████ can assist Appellant in utilizing the services that were approved if Appellant is not receiving what she should be through the AFC Home.

With the action in dispute in this case, however, Appellant has failed to meet her burden of proving that ██████████ erred in reducing her CLS based on the available information and Respondent's decision must therefore be sustained.

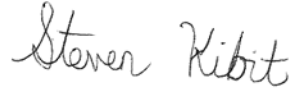
DECISION AND ORDER

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

Docket No. 2014-21386 CMH
Decision and Order

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** 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.