

**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. 2014-29779 CMH
Case No. ██████████

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

██████████, Clinical Supervisor, ██████████ CMH (CMH or Department), appeared and testified on behalf of the Department. ██████████, Behavioral Specialist; ██████████, Case Manager; ██████████, Occupational Therapist; and ██████████, COO appeared as witnesses for the Department.

ISSUE

Did the CMH properly calculate Appellant's Community Living Supports (CLS) hours?

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 Medicaid beneficiary receiving services through ██████████ CMH. (Exhibit A, Testimony)
2. 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.
3. Appellant is a ██████ year old Medicaid beneficiary, born ██████████. Appellant is diagnosed with Septo-Optic Dysplasia, Severe Dysfunction of the Hypothalamus Pituitary Adrenal Cortex Axis, Hypopituitarism, secondary grown hormone deficiency, Asperger's Disorder, and Raynaud's Syndrome. It is also believed that Appellant has an under-

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developed Corpus Callosum. Appellant is legally blind and has significant behavioral problems. (Exhibit A, p 11; Testimony).

4. Appellant lives with her parents in a single family home. Appellant's informal supports consist of her parents and grandparents. Appellant's grandparents try to take Appellant out into the community at least once per week. (Exhibit A, pp 10-14; Testimony).
5. On ██████████, a Person Centered Planning and Individual Plan of Service Amendment meeting was held. During the meeting, new behavioral goals and objectives were discussed, as well as the new amount, scope, and duration for Community Living Supports based on current needs for both Occupational Therapy and Behavior services. (Exhibit A, pp 10-24; Testimony).
6. On ██████████, the CMH sent an Advance Action Notice to Appellant's parents notifying them that CLS hours would be reduced from 12 hours per week to 7.5 hours per week, due to progress Appellant had made in her behaviors over the past year. The notice included rights to a Medicaid fair hearing. (Exhibit A, pp 76-78; Testimony).
7. On ██████████, Appellant's mother asked Appellant's case manager to reconsider the reduction in CLS hours and to increase Appellant's CLS hours to 14 hours per week. Appellant's case manager suggested that a new Occupational Therapy assessment could be conducted to identify new skills for Appellant to learn, which might lead to a need for more CLS hours. (Exhibit A, pp 79-80; Testimony)
8. On ██████████, Appellant's mother requested that an alternative Occupational Therapist be hired by CMH to determine alternative Occupational Therapy programming. (Exhibit A, p 81; Testimony)
9. On ██████████, a contract was arranged with an alternative Occupational Therapist, per Appellant's mother's request. (Exhibit A, p 81; Testimony)
10. On ██████████, a new Occupational Therapy evaluation was completed and recommendations were given. On ██████████, the Occupational Therapist recommended that CLS workers carry out the treatment plan for Appellant's self-care and IADL's 5 times per week for 90 minutes each session. (Exhibit B, pp 1-2; Testimony)
11. Based on the new Occupational Therapy evaluation, CMH is currently proposing that Appellant receive 13.5 to 15 hours of CLS per week. The CMH is recommending a range of CLS hours to provide a window for unforeseen staffing issues, which have arisen in the past. (Testimony)

12. The Michigan Administrative Hearing System received Appellant's request for hearing on ██████████. (Exhibit 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 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. 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. It 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.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2014, pp 113-114.

The Medicaid Provider Manual 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, in particular when parents of children without disabilities would be expected to be providing care:

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.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2014, Page 111

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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 his goals.

The CMH's Clinical Supervisor testified that in ██████████ new behavioral goals and objectives were discussed with Appellant's parents, as well as the new amount, scope, and duration for Community Living Supports based on current needs for both Occupational Therapy and Behavior services. The CMH's Clinical Supervisor testified that based on an assessment of Appellant's needs, the CMH proposed reducing Appellant's CLS hours from 12 to 7.5 per week based on medical necessity. The CMH's Clinical Supervisor testified, however, that following a new Occupational Therapy evaluation completed at Appellant's mother's request, it is now proposed that Appellant's CLS hours be raised to 13.5 to 15 hours per week; or at least 1.5 hours more per week than Appellant was receiving before the first proposed reduction. The CMH's Clinical Supervisor testified that a range of 13.5 to 15 was recommended only to allow for unforeseen issues with CLS staff; if there are no issues, than Appellant will receive 15 CLS hours per week under the current proposal.

Appellant's mother testified that when Appellant first started receiving services through CMH, they were told that they could always increase Appellant's CLS and respite hours. Appellant's mother indicated that in the fall of ██████████, Appellant began experiencing increased behavioral issues at school, which were brought to the attention of CMH; however, Appellant's parents were then told that there could be no increase in CLS hours because of budget issues. Appellant's mother testified that she also noticed that the CMH had reduced Appellant's CLS hours in the past without telling her. Appellant's mother indicated that she signed IPOS documents based on representations from the case manager that there were no changes to the level of services. Appellant's mother indicated that these past issues have led to trust issues between the family and CMH.

Appellant's mother testified that Appellant was severely aggressive when she began receiving services through CMH, but that she has improved greatly in this area. Appellant's mother indicated that since Appellant's aggressive behaviors have improved, it is time to focus attention on improving her ADL's and IADL's. Appellant's mother testified that without CLS, Appellant would be alone in her room all the time, outside of the times she is at school or eating. Appellant's mother testified that she requested an independent Occupational Therapy evaluation, which has resulted in the recommended increase in CLS hours. Appellant's mother indicated that her main concern with the current proposal is the range of hours because whenever there has been a range of hours in the past, Appellant has always received the minimum number of hours in the range. Appellant's mother testified that Appellant needs, and qualifies, for a minimum of 15 CLS hours per week. Appellant's mother pointed out that under the Decision Guide in the Medicaid Provider Manual, a person in Appellant's category (IV) qualifies for a minimum of 14 CLS hours per week.

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In response, CMH's Clinical Supervisor pointed out that the family also receives 60 hours of respite per month and that outpatient therapy has also been offered, and used by Appellant, in the past. CMH's Clinical Supervisor also testified that the CMH has offered to provide further supports in the school, but that Appellant's parents have refused to sign the release necessary to make this happen. CMH's Clinical Supervisor testified that in her professional opinion, the amount of CLS currently offered to Appellant is sufficient in amount, scope and duration to meet Appellant's needs and goals.

Appellant's mother indicated that the outpatient therapy made Appellant anxious, so that's why she stopped attending.

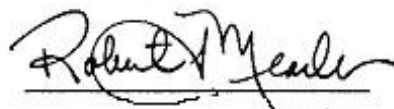
Based on the evidence presented, Appellant has failed to meet her burden of proof to show, by a preponderance of evidence, that the currently offered amount of CLS is insufficient to meet her needs. As indicated above, Appellant is currently being offered a minimum of 13.5 CLS hours per week, which is 1.5 hours more than she was receiving before her CLS hours were initially lowered, and a maximum of 15 CLS hours per week. While it is understandable that Appellant's family has concerns with the range of hours offered by CMH, the fact remains that if there are no issues with CLS staff, Appellant will be receiving the 15 hours of CLS per week that her family desires for her. Based on Appellant's current IPOS, a range of CLS hours between 13.5 and 15 per week is sufficient in amount, scope and duration to meet Appellant's medically necessary needs. On most days, Appellant will receive 1.5 hours each day of training for her IADL's and behaviors, followed by 1.5 hours of CLS activities designed to promote community inclusion, both in the home and in the community.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly determined that Appellant is eligible for 13.5 to 15 CLS 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

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cc:



RJM



Date Signed: May 5, 2014

Date Mailed: May 5, 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.