

**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. 2014-34290 CMH  
Case No. ██████████

Appellant

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**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 ██████████. Attorney ██████████ appeared on behalf of Appellant. ██████████, Mother and Guardian; ██████████, Caregiver; and Appellant appeared as witnesses.

██████████, Fair Hearing Officer, represented the ██████████ Mental Health Authority (CMH or Department). ██████████, Case Manager and ██████████, Program Director, appeared as witnesses for the Department.

Following the hearing, the record was left open until ██████████ for Appellant to obtain an Affidavit from his doctor, who had planned to testify at the hearing but got called away.

**EXHIBITS**

**Petitioner's Exhibits**

- Exhibit 1: Letters of Guardianship
- Exhibit 2: Letter from ██████████, dated ██████████
- Exhibit 3: Email from ██████████, dated ██████████
- Exhibit 4: Email from ██████████, dated ██████████
- Exhibit 5: Excerpts from Appellant's Plan of Care, dated ██████████
- Exhibit 6: Letter from ██████████, DO, dated ██████████
- Exhibit 7: Affidavit from ██████████, DO, dated ██████████

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Respondent's Exhibits

- Exhibit A: Request for Hearing, dated [REDACTED]
- Exhibit B: Copy of Annual/Re-Assessment, dated [REDACTED]
- Exhibit C: Copy of Treatment Plan Amendment, dated [REDACTED], inclusive of Estimated Cost of Services
- Exhibit D: Adequate Notice of Action, dated [REDACTED]
- Exhibit E: Letter from [REDACTED], Mother/Guardian, dated [REDACTED]
- Exhibit F: CMHA-CEI Operating Guideline #9.1.7: Guidelines for Residential Services and Community Living Supports in Non-Licensed Settings – Inclusive of Attachment that notes there is 24 hour supervision for Level III Specialized Residential Group Homes
- Exhibit G: Copy of Residential Personal Care and Community Living Supports Assessment completed on [REDACTED] and updated on [REDACTED]
- Exhibit H: CMHA-CEI Level of Care for CLS Authorization grid
- Exhibit I: Copy of Budget Exception Request for Community Living Supports for Appellant, dated [REDACTED]
- Exhibit J: [REDACTED], Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, Section 2.5.D. PIHP Decisions, page 14
- Exhibit K: [REDACTED], Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, Section 17.2 Criteria for Authorizing BE Supports and Services, page 112
- Exhibit L: [REDACTED], Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, Section 17.3.B Community Living Supports, pages 114 and 115
- Exhibit M: Adequate Notice for Denial of Services, dated [REDACTED]

**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:

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1. Appellant is a [REDACTED] year old Medicaid beneficiary, born [REDACTED], who is diagnosed with autism, mild mental retardation, and bipolar disorder/manic type. Appellant also suffers from sleep apnea, obesity, mega colon, seasonal allergies, tight Achilles tendons, and he is being monitored for Type 2 diabetes. (Exhibit B, pp 1, 10; Testimony)
2. Appellant is prescribed Fiber, Prozac, Colase, Lamictal, Multivitamin, Metformin, Clairtin, Nasal Decongestant, Mucous Relief, Motrin, Omega Fish Oil, Trazadone, Geodon, Seroquel, Lorazepam, and DDAVP. (Exhibit B, p 4; Testimony)
3. [REDACTED] 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/guardian and brother, who also suffers from autism. Appellant's parents are divorced, but he sees his father a few times per week. (Exhibit B, pp 1, 10; Testimony)
5. Appellant has a stated goal of living on his own. (Exhibit 3; Testimony)
6. Appellant is able to complete most personal care and Activities of Daily Living (ADL's) independently or with minimal verbal prompting. Appellant is able to perform housekeeping tasks such as sweeping, doing dishes, and laundry. Appellant enjoys playing on the computer, using calculators, and going to the movies. Appellant has few safety skills and needs supervision in the home or community at all times. Appellant does not like to talk on the phone and will not let others know when he has completed a task. Appellant has psychiatric needs and requires consistent monitoring of his mood state to address his needs in regard to his cycling of mood and catatonia with appropriate medications from his psychiatrist. Appellant tends to eat very quickly and could potentially have a risk of choking. (Exhibit B, p 10; Testimony)
7. Appellant receives \$ [REDACTED] per month in Home Help Services and \$ [REDACTED] per month in food assistance. (Exhibit B, p 1; Testimony)
8. On [REDACTED] and [REDACTED], CMH completed a Residential Personal Care and Community Living Support Assessment, which determined that Appellant had a Level of Care of 2.62, which equated to 6.15 CLS hours per day. (Exhibit G, pp 1-5; Testimony)
9. On [REDACTED], an Annual Re-Assessment of Appellant's needs was completed by Appellant's Case Manager. The Case Manager recommended the following supports and services be authorized: Community Living Supports, Out of Home Pre-Voc, Respite Care, and Targeted Case Management. (Exhibit B, pp 1-12; Testimony)

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10. On [REDACTED], Appellant's Treatment Plan was updated. The total estimated cost of services for the year was estimated at \$ [REDACTED]. (Exhibit C, pp 1-8; Testimony)
11. Also on [REDACTED], the CMH sent Appellant an Adequate Notice of Action indicating that the services in the above-referenced Treatment Plan would be provided. (Exhibit D, pp 1-2; Testimony)
12. On [REDACTED], Appellant's mother/guardian submitted a Request for Hearing to the Michigan Administrative Hearing System, in which she requested that Appellant receive at least 20 CLS hours per day. (Exhibit A, pp 2-4). The Request for Hearing also contained a letter from Appellant's physician in which he opined that the 6.1 CLS hours per day Appellant was currently receiving was inadequate. (Exhibit A, p 5; Testimony)
13. On [REDACTED], CMH submitted a Budget Exception Request to see if any further CLS could be authorized for Appellant. (Exhibit I, p 1; Testimony).
14. On [REDACTED], CMH sent Appellant another Adequate Action Notice indicating that Appellant was still only authorized for 6.15 CLS hours per day. (Exhibit M; 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 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 medical necessity and community living supports:

## **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;
- 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.

### **2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

#### **2.5.D. PIHP DECISIONS**

Using criteria for medical necessity, a PIHP may:

- Deny services:
  - that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - that are experimental or investigational in nature; or
  - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

*Medicaid Provider Manual,  
Mental Health and Substance Abuse Chapter,  
April 1, 2014, pp 11-14*

#### **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

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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

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- 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 Chapter,  
April 1, 2014, pp 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. 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. (Emphasis added).

*Medicaid Provider Manual,  
Mental Health and Substance Abuse Chapter,  
April 1, 2014, p 112*

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Appellant's case manager testified that she is a Licensed Masters Social Worker with [REDACTED] years of experience working with persons with developmental disabilities (DD) and she has been a case manager for [REDACTED] years. Appellant's case manager indicated that Appellant needs 24 hour supervision, but that the supervision does not need to be one on one 24 hours per day. Appellant's case manager testified that her whole caseload consists of persons with needs similar to Appellant's. Appellant's case manager indicated that Appellant could live in a group home with others with similar conditions or in a home with roommates with similar conditions. Appellant's case manager reviewed Exhibit G, a Residential Personal Care and Community Living Support Assessment, which determined that Appellant had a Level of Care of 2.62, which equated to 6.15 CLS hours per day. Appellant's case manager indicated that CMH has offered to assist Appellant in finding a group home or a home with roommates and has helped Appellant visit some homes. Appellant's case manager testified that in her opinion, the 6.15 CLS hours authorized per day are sufficient in amount, duration and scope to meet Appellant's needs. Appellant's case manager also testified that no other consumers at CMH receive 24 CLS hours per day.

On cross-examination, Appellant's case manager testified that she has been Appellant's case manager for 3 ½ years and sees him monthly. Appellant's case manager indicated that she has 32 consumers in her caseload. Appellant's case manager testified that in her opinion, the current allotment of CLS hours would allow Appellant to live in the least restrictive setting if those hours were pooled with roommates. Appellant's case manager indicated that Appellant is re-directable, sometimes catatonic, could not be left alone and needs 24 hours supervision, albeit not 1 on 1 supervision all the time. Appellant's case manager agreed that Appellant already receives Adult Home Help through the Department of Human Services, so that is not an unexplored option. Appellant's case manager testified that a natural support is anyone who has a connection with Appellant and a natural support does not have to be a family member. Appellant's case manager testified that she is aware that Appellant's mother is single, works full-time, and has another soon who is autistic. Appellant's case manager agreed that it would not be ideal for Appellant's brother to supervise Appellant and that Appellant has no other relatives in the area.

Appellant's case manager testified that Appellant had been receiving residential services through [REDACTED] but was dismissed from the program for behavioral issues. Appellant's case manager testified that CMH has tried to get Appellant placed into another residential service home but as of yet had been unsuccessful. Appellant's case manager testified that she thinks Appellant would be fine in a group home. Appellant's case manager testified that the maximum amount of CLS that CMH will authorize per day is 8.2 hours, but that a consumer can receive more through an exception process if they can show a need. Appellant's case manager indicated that some examples of such need would be biting, kicking, getting undressed in public, and acting out sexually. Appellant's case manager testified that the CMH offered, prior to the hearing, to increase Appellant's CLS hours to 9 hours per day, but she did not agree that the settlement offer meant that the CLS guidelines were "loose". Appellant's case manager testified that not all consumers ask for an increase in CLS hours, so there is some flexibility. Appellant's case manager indicated that it would be inequitable to grant Appellant's request for 20-24 CLS hours per day because then the CMH would not be

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able to serve all of its consumers. Appellant's case manager testified that Appellant is on a waiting list for roommates and the CMH also organizes Meet and Greets with potential roommates. Appellant's case manager testified that until he finds roommates, or chooses to go into a group home, Appellant will have to rely on the family support he is relying on now.

The CMH's program director testified that she is the program director at CMH for persons with DD, that she has been with CMH since ██████ and, prior to becoming director, she supervised the residential services department at CMH for ██████ years. The CMH's program director testified that in the past, all persons with conditions similar to Appellant were housed in licensed residential homes. The CMH's program director testified that CLS has been in existence since ██████. The CMH's program director testified that Appellant needs 24 hour supervision and that this is common for this population. The CMH's program director testified that CMH serves many with needs similar to Appellant. The CMH's program director testified that CMH tries to tie the costs of providing CLS hours to the cost of providing care in a group home; however, the process is not an exact science. The CMH's program director testified to that end, the CMH developed a procedure, which includes an assessment of each consumer, and then a ranking of each consumer in one of 4 levels, with 4 being the highest. The CMH's program director testified that there is also an exception committee, which she sits on, and which allows flexibility and which, in this case, led to the CMH offering Appellant 9 CLS hours per day.

On cross-examination, the CMH's program director testified that the hearing was her first time meeting Appellant and that she oversees the supervisors who oversee Appellant's care. The CMH's program director testified that they do have one consumer who temporarily received 20 CLS hours per day because he was very aggressive with staff and other consumers.

Appellant's mother testified that she is an RN and works full-time for the ██████████ Health Department. Appellant's mother indicated that she has one other son who also has special needs. Appellant's mother testified that she believes Appellant can live independently, that he is attending a landscaping program, that he would move out if he found a job, and that he is currently attending ██████████. Appellant's mother testified that she has been divorced for ██████ years, that her ex-husband has never been a primary care-giver for Appellant, that he sees Appellant rarely, is not involved in Appellant's care, and could not take over Appellant's care if anything happened to her. Appellant's mother testified that she has no other family in the area and that her closest relative is a ██████ year old sister in ██████.

Appellant's mother testified that Appellant is ██████ years old and lives with her in ██████ Michigan. Appellant's mother indicated that Appellant is autistic, bi-polar, morbidly obese and suffers from sleep apnea. Appellant's mother reviewed the medication Appellant takes and indicated that she gives Appellant his medications on a daily basis. Appellant's mother testified that Appellant is not currently working, but did work at a laundry service for 4 weeks last summer. Appellant's mother testified that Appellant has no work prospects at present, but he does volunteer. Appellant's mother testified that Appellant attended school until the maximum allowed age of ██████, so he is no longer in school. Appellant's mother indicated that Appellant could not pursue higher education, but might be able to hold down a job.

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Appellant's mother testified that there were three pushing incidents involving Appellant at [REDACTED] that led to his dismissal from the program, although Appellant's mother also indicated that she was unhappy with the care there. Appellant's mother testified that she has sought other placements for Appellant, including a home with roommates in [REDACTED], Michigan. Appellant's mother testified that Appellant was ultimately not accepted into that home because the parents of the roommates did not think Appellant received enough CLS hours per day to help the others. Appellant's mother also testified that she has looked into the [REDACTED] Program, but Appellant was ultimately deemed inappropriate for the program. Appellant's mother testified that after Appellant was dismissed from [REDACTED], she had to take 10 weeks off from work to care for him while she sought another placement. Appellant's mother indicated that due to changes going on at her work right now, she would jeopardize her job if she had to take more time off. Appellant's mother testified that Appellant's current providers are through [REDACTED] and that she uses her own respite hours to cover Appellant's care while she is at work. Appellant's mother also testified that she banks her weekend and holiday CLS hours so Appellant's care can be covered when she is at work.

Appellant's mother testified that Appellant reads at a 4<sup>th</sup> or 5<sup>th</sup> grade level, that he can count, but cannot handle money, that he cannot drive, that he can read a clock, but does not understand time, that he cannot prepare his own meals or schedule his own doctor appointments, that he can use the microwave, but could not make a healthy meal, and that he cannot use public transportation. Appellant's mother indicated that Appellant cannot be left alone outside because he would wander off. Appellant's mother testified that the police have been called to her home because Appellant has pushed her and once to the library because Appellant was masturbating there. Appellant's mother testified that Appellant needs prompting for just about everything, especially when he is in a catatonic state. Appellant's mother testified that she worries about him using the oven and burning himself with hot water. Appellant's mother indicated that Appellant can dress himself with prompting, depending on his mood, although he does not always dress appropriately for the weather. Appellant's mother described an incident at a doctor's office where Appellant was inappropriately hugging a young girl and an incident at home when Appellant began running towards a female neighbor who was sunbathing. Appellant's mother testified that she receives \$ [REDACTED] per month in AHH through DHS, which pays for cleaning, grooming, transportation and medications. Appellant's mother testified that if something happened to her there is no-one to take care of Appellant.

Appellant's caregiver testified that he is Appellant's caregiver through [REDACTED], that he works with Appellant 11 hours per week, and has been Appellant's caregiver for 1 year. Appellant's caregiver testified that a routine day with Appellant would involve picking Appellant up around noon, and then playing basketball, going bowling, walking, playing games, or watching movies. Appellant's caregiver testified that he helps Appellant with his meals, although Appellant's mother packs the meals, and that he cannot leave Appellant alone. Appellant's caregiver testified that he has to offer a lot of options to Appellant to get him to communicate his desires. Appellant's caregiver indicated that when he first started working with Appellant, Appellant would push him when he became frustrated. Appellant's caregiver testified that Appellant will occasionally urinate himself and that he has to ask Appellant every hour or so whether he has to go to the bathroom. Appellant's caregiver testified that there are 4 workers in total from [REDACTED] who work with Appellant.

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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's request for 20 CLS hours per day 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 his goals. Appellant argues that CMH is limiting Appellant's CLS hours solely based on cost, that the CLS hours authorized are insufficient because they do not allow Appellant to live in the least restrictive environment, the hours are not sufficient in amount, scope or duration to meet Appellant's needs, and that there are no other appropriate, efficacious, less-restrictive and cost-effective options available for Appellant. Based on the evidence presented, Appellant has failed to meet his 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, CMH has developed a reasonable procedure to determine CLS hours whereby it starts with an individual assessment of a consumer's needs, determines the cost to care for such an individual in a licensed group home, and then allocates CLS hours based on that cost. The CMH also allows for the possibility of additional CLS hours through an exception process to consider individual needs that are not considered by the Community Living Support Assessment. Given that the CMH starts with an individual assessment and then allows for an exception process, it cannot be said, as Appellant argues, that the CMH is limiting services solely based on cost. Appellant's mother, even though she works full-time and has another son with autism, is clearly able to offer Appellant significant informal supports because she has been doing so his whole life. Appellant's father also apparently sees Appellant a "few times per week". And, as Appellant's case manager suggested during the hearing, Appellant's family can always try to develop new informal supports.

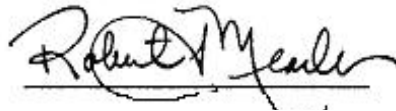
Appellant's options are to continue to live with his mother, move into a licensed group home, or move into a home with roommates who have similar needs. Out of those three options, it appears that the most desirable option would be for Appellant to move into a home with roommates. The CMH is working with Appellant and his family to make this happen and must continue to do so. It is suggested that Appellant accept the offer of 9 CLS hours per day that CMH made prior to the hearing, so that Appellant would be a more "attractive" roommate candidate to other families.

**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 20 CLS hours per day 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]

RJM [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.