

**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. 2014-35582 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 mother and guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's father, also appeared as a witness as did Appellant.

██████████, Hearings Officer, represented Respondent ██████████ (CMH or ██████████). ██████████, Developmental Disability (DD) Services Supervisor; ██████████, DD Service Manager; ██████████, Chief Executive Officer, and ██████████, Utilization Manager appeared as witnesses for Respondent.

ISSUE

Did Respondent 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. ██████████ is under contract with the Michigan Department of Community Health (DCH) to provide Medicaid covered services to people who reside in its service area. (Exhibit A, Testimony)
2. Appellant is a ██████ year-old Medicaid beneficiary, born ██████████, who has been diagnosed with autism and Celiac disease. (Exhibit A, Attachment A, p 2; Exhibit 1; Testimony)
3. Appellant resides in his family home with his parents. Appellant has many natural and informal supports within his family and through his friends at ██████████ and the ██████████. (Exhibit A, Attachment A, p 2; Testimony)

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4. Appellant is able to complete the majority of his daily living skills with prompting. Appellant is able to complete his own hygiene, is able to use the microwave with supervision and is able to do some household chores with prompting. (Exhibit A, Attachment A, p 2; Testimony)
5. Appellant graduated from [REDACTED] and is currently working at [REDACTED] in the enclave program. (Exhibit A, Attachment A, p 2; Testimony)
6. Appellant has been receiving services through [REDACTED] pursuant to the Habilitation Supports Waiver Program. (Exhibit A, Attachment A, p 10; Testimony).
7. Specifically, Appellant is authorized for Community Living Supports (CLS), Skill Building, and Supports Coordination. (Exhibit A, Attachment A, p 14; Testimony)
8. At the time of his request for hearing, Appellant was also receiving 47.17 hours of Adult Home Help Services (HHS) per week through another Medicaid program overseen by the Michigan Department of Human Services (DHS). (Exhibit A, Attachment A, p 4; Testimony)
9. On [REDACTED], [REDACTED] completed an Individual Plan of Service and determined that Appellant's CLS goals could be met with 14.25 one on one CLS hours per week, a reduction of 5.25 one on one CLS hours per week from the prior year. Appellant would continue to receive 28.25 hours per week for Skill Building, [REDACTED], and the [REDACTED] program, as well as the 47.17 HHS hours per week. (Exhibit A; Attachments 1, 6; Testimony)
10. On [REDACTED], [REDACTED] notified Appellant's parents via written notice that Appellant's IPOS had been completed and that his one on one CLS hours would be reduced from 19.5 hours per week to 14.25 CLS hours per week. Appellant's one on one CLS hours remained at 19.5 hours per week during the pendency of this appeal. (Exhibit A, Attachment 2; Testimony)
11. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing.
12. Petitioner's Exhibit 2 is a letter from [REDACTED], dated [REDACTED], in which the doctor indicates that Appellant should not be left home alone without supervision and that it would not be good for Appellant to ride the bus for 1 hour and 45 minutes per day because of his Celiac's disease. (Exhibit 2)

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13. Petitioner's Exhibit 3 is a [REDACTED] letter from [REDACTED], Principal at the school Appellant attended. [REDACTED] indicated that when Appellant attended school, he only had to ride the bus for a short period of time. [REDACTED] indicated that he would be very concerned if Appellant had to ride the bus for 1 hour and 45 minutes per day. (Exhibit 3)

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.]

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

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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;

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- 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 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

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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 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);

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- 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

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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 adult would typically be in school but for the parent's choice to home-school. [MPM, April 1, 2014 version, Mental Health/Substance Abuse Chapter, pages 88-89 (emphasis added).]

Here, ██████████ notified Appellant and Appellant's guardian that it planned to reduce Appellant's one on one CLS hours from 19.5 hours per week to 14.25 hours per week.

██████████ DD Services Supervisor testified that she holds a Master's Degree in Social Work and supervises the CMH's case managers, including Appellant's case manager. ██████████ DD Services Supervisor testified that Appellant is currently receiving 19.5 one on one CLS hours per week, plus Skill Building, ██████████, and a day program (██████████), for a total care amount of 42.5 hours per week. ██████████ DD Services Supervisor indicated that in addition to the 42.5 hours per week received through ██████████, Appellant also receives 47.1 hours of HHS through DHS. ██████████ DD Services Supervisor testified that Appellant's needs are assessed throughout the year and that a clinical assessment is completed once per year. ██████████ DD Services Supervisor indicated that following the most recent clinical assessment, the team tried to negotiate a reduction in Appellant's one on one CLS hours with Appellant's family. ██████████ DD Services Supervisor indicated that Appellant's skills had increased during the past year, that he was more independent, and needed to rely on staff less. ██████████ DD Services Supervisor testified that the proposed reduction in one on one CLS would bring Appellant more in line with medical necessity criteria and the purpose of CLS, which is to train Appellant to be more independent, not to supervise Appellant.

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██████████ DD Services Manager testified that she has over 25 years of experience with the CMH and has known Appellant for ██████ years. ██████ DD Services Manager testified that she oversees all services Appellant receives through CMH. ██████ DD Services Manager indicated that the CMH is obligated to provide services based on medical necessity criteria and that decisions regarding the amount of services are based on assessments by clinicians. ██████ DD Services Manager testified that CLS services are only services designed to treat, ameliorate, arrest or delay the progression of a DD. ██████ DD Services Manager indicated that Appellant's CLS hours were outside the PIHP benefit package for persons at his level of care. ██████ DD Services Manager testified that all of Appellant's goals and services are designed to promote independence and that Appellant has made amazing progress with his independence over the years. ██████ DD Services Manager indicated that the CMH must consider the availability of natural supports and the least restrictive environment for Appellant when approving CLS hours and that Appellant's needs can be met with the reduced amount of CLS proposed.

██████████ Chief Executive Officer testified regarding a complaint Appellant's parents had filed against the CMH during this process, however, the parties were advised that this Administrative Law Judge does not have jurisdiction over that complaint and it is not part of this appeal.

Appellant's mother testified that the PIHP's benefit package has not changed over the years; Appellant has been receiving the same level of services for years, so she cannot understand the current proposed reduction. Appellant's mother indicated that Appellant is the same and can only be left alone for a short period of time. Appellant's mother testified that Appellant has a great plan now that meets his needs and that if no-one shakes the boat he is watched and cared for. Appellant's mother testified that the hours contained in the letter from ██████ Chief Executive Officer (Exhibit A, Attachment 6) do not add up and that under the current proposal, Appellant will be on a bus for 1 hour and 45 minutes 4 mornings a week. Appellant's mother indicated that the CMH cannot count this proposed time on the bus as "engaged" time with Appellant because there is no staff on the bus, just a bus driver. Appellant's mother also expressed concern that Appellant could not be on the bus that long without access to a bathroom because of his Celiac's disease.

Appellant's mother indicated that as it stands now, CLS staff come each morning and help Appellant get ready for the bus, something he would not be able to do on his own. Appellant's mother testified that there was no negotiation with the proposed reduction in CLS and that ██████ staff presented the proposed amount as take it or leave it. Appellant's mother also questioned whether the time Appellant spends in the Connections program amounts to CLS because all Appellant does there is color. Appellant's mother indicated that Appellant does not have the best safety skills and likes to talk to strangers. Appellant's mother testified that Appellant has a phone and knows how to use it, but recently he did not use it during an incident that resulted in him standing outside in the rain for an extended period of time. Appellant's mother testified that HHS are chore services and cannot be counted as supports. Appellant's mother

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pointed out that the HHS workers are not engaging with Appellant, they are simply doing cleaning, cooking and other chores related to Appellant's care.

Appellant's father testified that if there was a fire, Appellant might not move if there was something good on television. Appellant's father indicated that there was recently an incident where Appellant knocked over a lamp, which would have started a fire if left unattended, but Appellant did nothing. Appellant's father also indicated that there was no call for a meeting with Hiawatha to negotiate a reduction in CLS hours.

Appellant's mother testified that the proposed schedule also changes Appellant's work schedule at ██████████, which she is not sure ██████████ is on board with. Appellant's mother testified that both she and her husband still work full-time, so this reduction in Appellant's CLS hours will affect the whole family. Appellant's mother indicated that she and her husband are making future plans for Appellant whereby his sister will become his guardian and he will live across the road from her. Appellant's mother testified that Appellant wants to live at home and that he has a great life. Appellant's mother indicated that Appellant is doing so well, it would be a shame for this reduction in hours to be put through. Appellant's mother testified that if you look at the actual one on one CLS hours Appellant receives, it is not very much.

In response, ██████████ Chief Executive Officer testified that the long bus ride was proposed because of the family's concern about leaving Appellant at home alone in the morning while waiting for the bus. ██████████ Chief Executive Officer suggested that the family could schedule HHS in the morning so that someone could be there to keep an eye on Appellant while he is waiting for the bus. ██████████ Chief Executive Officer indicated that the HHS staff could also pack his lunch and make sure he was ready to go. ██████████ Chief Executive Officer testified that the CMH does have to consider the amount of HHS Appellant receives when determining the amount of CLS he receives because Medicaid is the payor of last resort.

██████████ DD Services Manager testified that she has also discussed the use of assistive devices to assist Appellant with reminding and cuing. ██████████ DD Services Manager indicated that Appellant is proficient with the use of his iPhone and there are apps that could be used to assist him.

Appellant's mother indicated that the family lives 3 miles outside of ██████████, Michigan and that it is very hard to find someone to work at all, let alone someone to cook the specialized meals Appellant needs and to do his laundry and take care of his personal needs. Appellant's mother testified that the person who currently does Appellant's HHS holds down two other jobs and her schedule cannot be easily changed. Appellant's mother testified that she did not recall any discussions regarding the use of technology, but that the family loves technology and would be open to exploring it.

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 ██████████ should be complementing

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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 reduction in his CLS hours was inappropriate. Based on the evidence presented, Appellant failed to meet this burden. Here, following the most recent IPOS, ██████████ determined that Appellant's one on one CLS goals could be met with 14.25 hours per week. Appellant also receives 28.25 hours per week for Skill Building, Special Olympics, and the Connections program, plus 47.17 HHS hours per week, for a total of 89.67 care hours per week, an amount sufficient to meet Appellant's needs. ██████████ witnesses indicated that the reduction in CLS hours was based on a clinical 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. The clinical staff also pointed out that Appellant has shown tremendous improvement in skills over the years, which would also justify a reduction in his one on one CLS, and that Appellant has significant informal supports, which also need to be considered. It is apparent from the evidence that previously Appellant was using CLS hours for monitoring and supervision, which would not be a proper use for CLS hours. ██████████ also needs to ensure that it has the resources to meet the needs of all of the customers it serves.

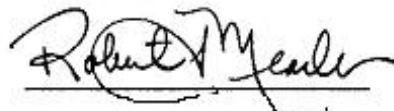
Appellant's parents should be commended on the enormous support that they provide to their son. While it is clear that Appellant would benefit from additional and even unlimited services, that fact alone is not enough to overcome ██████████ decision. It is also clear that the proposed reduction will cause some hardship to Appellant and his family as they attempt to adjust the entire family's schedule to meet Appellant's needs. However, ██████████ decision is based on competent and material evidence and is supported by the record.

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.

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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RJM [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

cc: [REDACTED]
[REDACTED]
[REDACTED]
[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.