STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-4147

IN THE MATTER OF:

[redacted]

Docket No. 15-017893 CMH
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], Appellant's sister/caregiver and [redacted], Appellant's mother, appeared and testified on Appellant's behalf. [redacted] appeared as an interpreter.

[redacted], Assistant Corporation Counsel, [redacted] Community Mental Health Authority (CMH), represented the Department. [redacted], Access Center Manager, appeared as a witness for the Department.

ISSUE

Did the CMH properly deny Appellant's request for additional 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 an [redacted] year old Medicaid beneficiary, born [redacted], receiving services through [redacted] Community Mental Health (CMH). (Exhibit A, p 12; Testimony)

1. CMH is under contract with the Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area.

2. Appellant is diagnosed with Mixed Receptive-Expressive Language Disorder, Attention-Deficit/Hyperactivity Disorder, Enuresis Not Due to a

General Medical Condition, and Moderate Mental Retardation. Appellant's FSIQ Score is 44. Appellant lacks age-appropriate independence skills, including, but not limited to, hygiene skills, dressing and other basic independence skills (e.g. meal preparation skills). (Exhibit A, pp 20, 35-36; Testimony)

3. Appellant is prescribed the medications Desmopressin and Focalin. (Exhibit A, p 15; Testimony)

4. Appellant lives with his parents and siblings in a single family home. (Exhibit A, pp 13, 20; Testimony)

5. Appellant attends [redacted] in the mild cognitive impairment program. (Exhibit A, pp 19-20; Testimony)

6. Appellant's current services through CMH include supports coordination, medication reviews, psychotherapy, 15 hours per week of community living supports and 12.5 hours per week of respite services. (Exhibit A, p 37; Testimony)

7. Appellant's sister is his CLS provider and respite worker. (Exhibit A, p 20; Testimony)

8. At the time of the denial in this matter, Appellant had not applied for Adult Home Help Services through the Department of Health and Human Services. (Exhibit A, pp 20-21; Testimony)

9. At some point following Appellant's Annual Assessment on [redacted], Appellant's mother requested six (6) additional CLS hours per week. (Exhibit A; Testimony)

10. On [redacted], CMH sent Appellant an Adequate Action Notice informing him that the request for six (6) additional CLS hours per week had been denied. (Exhibit A, pp 6-8; Testimony)

11. Appellant's request for hearing was received by the Michigan Administrative Hearing System on September 10, 2015. (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 Health and Human Services (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services 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 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.

The Medicaid Provider Manual articulates Medicaid policy for Michigan. It states, in relevant part:

> **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
> - 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.

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, (that exceeds state plan for adults) prompting, reminding, cueing, (revised 7/1/2011), 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/Substance Abuse Chapter*
> *July 1, 2015, pp 120, 122-123*
> *Emphasis added.*

CMH's Access Center Manager testified that the Access Center makes level of care determinations for beneficiaries, approves on-going care, and connects beneficiaries with providers. CMH's Access Center Manager reviewed Appellant's age, diagnoses, living situation, school attendance, and the current services Appellant is receiving through CMH. CMH's Access Center Manager indicated that the CLS services Appellant is receiving are B3 services under the State Plan and are not intended to meet all of Appellant's needs and preferences. CMH's Access Center Manager also testified that beneficiaries must access State Plan/Adult Home Help services prior to utilizing CMH services, but that at the time of the denial in this matter, Appellant had not applied for Adult Home Help services. CMH's Access Center Manager reviewed the function of CLS, which includes increasing or maintaining personal self-sufficiency and facilitating an individual's achievement of goals of community inclusion and participation, independence or productivity. Here, CMH's Access Center Manager indicated that Appellant's request for additional CLS was denied because it was determined that the authorized services were sufficient in amount, scope and duration to meet Appellant's needs. CMH's Access Center Manager also indicated that there was no documented change in Appellant's condition to support an increase in CLS and that, in fact, Appellant's behaviors had actually decreased slightly during the prior authorization period. CMH's Access Center Manager also indicated that the CMH considered the fact that they must take into account their ability to serve other beneficiaries and that there has been a significant reduction in funding at the CMH for the current fiscal year.

Appellant's mother testified that she is very concerned about her son as she has to track and monitor him all day long. Appellant's mother indicated that Appellant would be in danger if left alone because he touches things without knowing what they are.

Appellant's mother indicated that Appellant's psychiatrist recently informed her that Appellant operates at the level of a 6 year old. Appellant's mother testified that she needs help with Appellant because she also has three other minor children in the home and, outside of the time Appellant is in school (5 days per week from 7:00 am to 3:00 pm) she is responsible for him.

Appellant's sister/caregiver testified that she has been working with Appellant for some time, but that he is still struggling. Appellant's sister/caregiver indicated that she placed pictures in the bathroom with the various steps necessary to complete tasks, but Appellant still skips steps or does them in the wrong order. Appellant's sister/caregiver explained, for example, that when Appellant tries to wash his face, he opens his fingers when he cups them under the water so that by the time he raises his hands to rinse his face there is no water left in his hands. Appellant's sister/caregiver testified that Appellant needs assistance with most everything, including guiding while dressing. Appellant's sister/caregiver testified that Appellant leaves food under the bed and wakes up in the middle of the night, so he requires constant monitoring. Appellant's sister/caregiver indicated that the family has not yet applied for Adult Home Help, but is working with Appellant's case manager to do so.

Appellant bears the burden of proving by a preponderance of the evidence that an additional 6 hours of CLS per week are medically necessary. CMH provided sufficient evidence that it adhered to federal regulations and state policy when authorizing 15 hours per week of CLS for Appellant, and in denying an additional 6 hours of CLS per week. Appellant failed to prove by a preponderance of the evidence that an additional 6 hours per week of CLS was medically necessary.

As indicated above, B3 services are not intended to meet all of a consumer's needs and preferences and there was no evidence presented that there had been a change in Appellant's condition justifying a need for an increase in CLS hours. In fact, there was some evidence presented that Appellant's condition actually improved during the prior authorization period. Furthermore, beneficiaries must access State Plan/Adult Home Help services prior to utilizing CMH services and here, at the time of the denial, Appellant had not applied for Adult Home Help services. Appellant's sister/caregiver indicated that they were now working with Appellant's case manager to make such an application, which may provide them with the additional help they desire. Finally, the CMH must take into account its ability to serve other beneficiaries and here there has been a significant reduction in funding at the CMH for the current fiscal year. Based on the evidence presented, the current amount of CLS authorized is sufficient in amount, scope and duration to reasonably meet Appellant's needs.

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 an additional 6 CLS hours per week.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health
and Human Services

RJM/cg

cc: [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.