

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) 373-4147

IN THE MATTER OF

██████████,

Appellant

Docket No. 15-019133 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 telephone hearing was held on ██████████. Appellant appeared and testified. Appellant's provider, ██████████ also appeared and testified.

Attorney ██████████ (P██████████), Assistant Corporate Counsel represented Respondent ██████████ County Community Mental Health (CMH or Department or Respondent). ██████████, ██████████ Manager, appeared as a witness for the Department.

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:

1. Appellant is a ██████ year old Medicaid beneficiary.
2. Appellant has been diagnosed with spinal muscular dystrophy. The condition results in significant muscle weakness and lack of control. Appellant uses a wheelchair, with positional/postural supports, and is limited in her ability to use her hands. (State's Exhibit A page 37)
3. Appellant resides at home with her parents and brother.
4. Appellant is currently authorized for supports coordination, community living supports service (CLS) and respite services.
5. CMH is under contract with the Department of Health and Human

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Services (DHHS) to provide Medicaid covered services to people who reside in the CMH service area.

6. Appellant is approved for 25 hours per week of CLS through CMH.
7. On [REDACTED], Appellant filed a request with CMH to increase her CLS to 35 hours per week.
8. On [REDACTED], CMH sent Appellant Notice that her request was denied, stating that services currently authorized are sufficient in amount, scope, and duration to reasonably meet the goal of promoting community inclusion, participation, independence and productivity.
9. On [REDACTED] Appellant requested a review of the Notice of denial of additional hours of CLS.
10. On [REDACTED], [REDACTED] CMH sent Appellant notice that the intensity currently authorized is sufficient in amount, scope and duration to reasonable meet the goal of promoting community inclusion and participation, independence and/or productivity. Goals and objectives identified can be attended to concurrently, consecutively or on alternate occasions. (State's Exhibit A page 6)
11. On [REDACTED], Appellant filed a request for a hearing with the Michigan Administrative Hearings System (MAHS) to contest the Respondent's negative action. (State's Exhibit A page 10)

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

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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*

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 Appellant's goals.

The CMH's representative testified that the purpose of CLS is skill building and that CLS is not intended to meet all of the needs of the beneficiary. Evidence on the record shows that the authorization for 25 hours of CLS per week reflects Appellant's medical necessity for the services. Her annual assessment lists numerous activities and events in which Appellant has participated in within the community. She has completed her undergraduate degree from ██████████. She is achieving the CLS goals of community inclusion and participation with the 25 hours per week of service that is authorized. CMH contends that 25 hours of CLS per week is sufficient for Appellant to reach her objectives.

CMH further contends that CMH must take into account its capacity to serve other Medicaid beneficiaries who have need of services. The Department of Health and Human Services has notified CMH that significant cuts in Medicaid will occur this fiscal year through rebasing. Appellant is receiving a total of 37.5 hours per week of paid support. The amount of services is consistent with what is provided to other Medicaid

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beneficiaries. If additional services are needed for her program at [REDACTED], the University is required to provide them through the Americans with Disabilities Act. It does not appear that Appellant needs skill development related to tasks of independence; rather, she requires direct personal assistance to accomplish tasks that she is unable to perform due to her physical disability.

Evidence on the record indicates that Appellant recently started her first year in a Master's program at [REDACTED]. She has received assistance in her college classes such as; opening classroom doors, taking off and putting on her coat, assisting her getting to her desk, getting out her books, laptop and writing utensils, turning the pages of her books, laptop and other needed essentials when she is at home. (Attachment C)

Appellant testified on the record that she would like the additional CLS hours to assist her to attend class, get around campus, with health and wellness related goals, community inclusion, water aerobics as well as volunteering. Her goals have evolved to encompass more activities and she is working on becoming more independent. Appellant further stated that she often has to request temporary increases in CLS hours throughout her semester.

CMH has established by the necessary, competent and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Appellant should receive 25 hours per week in Community Living Service hours based upon the circumstances in existence at the time of the request for hearing. Appellant can request additional services relevant to her change in circumstances.

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 was eligible for 25 CLS hours per week and properly denied Appellant's request for an increase in CLS hours.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

[REDACTED]
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cc:

[REDACTED]

LYL [REDACTED]

Date Signed: December 22, 2015

Date Mailed: December 22, 2015

***** 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.