

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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IN THE MATTER OF:

██████████

Appellant

Docket No. 15-004944 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 a request for a hearing filed on Appellant's behalf.

After due notice, a telephone hearing was held on May 27, 2015. ██████████, Appellant's mother and co-legal guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's father and co-legal guardian, and ██████████, one of Appellant's care providers, also testified as witnesses for Appellant. ██████████, Manager of Due Process, represented the Respondent Oakland County Community Mental Health Authority (OCCMHA). ██████████, OCCMHA's Manager of Customer Services, testified as a witness for Respondent. ██████████, Director of Supports Coordination; ██████████, Unit Director; ██████████, Supervisor of Supports Coordinator; and ██████████, Supports Coordinator; from the Macomb-Oakland Regional Center, Inc. (MORC) also testified as witnesses for the OCCMHA.

ISSUE

Did Respondent properly deny Appellant's request for housing assistance and limit Appellant's current authorization of 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. The OCCMHA is under contract with the Michigan Department of Health and Human Services (DHHS) to provide Medicaid covered services to beneficiaries who reside in its service area.
2. In turn, the OCCMHA contracts with MORC to provide and oversee services.
3. Appellant is a ██████████ Medicaid beneficiary who has been

Docket No. 15-004944 CMH
Decision and Order

diagnosed with a Developmental Disability and whose parents are his legal guardians. (Exhibit 2, pages 1-4; Exhibit 3, page 7).

4. Appellant has also been receiving services through OCCMHA and MORC, including CLS. (Testimony of Appellant's representative; Testimony of Kruger).
5. Previously, Appellant lived in a two-bedroom apartment in Clarkston, Michigan, with another Medicaid beneficiary who was receiving services through OCCMHA and MORC. (Exhibit 3, page 12).
6. Under that arrangement, Appellant received CLS 24 hours a day, 7 days a week, but at least some of the hours were shared with his roommate. (Testimony of Appellant's representative; Testimony of Kruger).
7. In [REDACTED], Appellant's roommate decided to move out and began the process of transitioning to a new residence. (Exhibit 3, page 12).
8. On [REDACTED], the OCCMHA's Office of Recipient Rights received a complaint from Appellant's mother/guardian regarding Appellant's living situation. (Exhibit 3, pages 12-17).
9. In that complaint, Appellant's mother wrote that MORC had been aware of Appellant's housing issues since October of 2014, but only advised Appellant's guardians of the roommate moving out on [REDACTED]. (Exhibit 3, page 12).
10. Appellant's mother also wrote that, at that time, MORC also advise them that MORC would begin the process of searching for a new roommate for Appellant. (Exhibit 3, page 12).
11. Appellant's mother further wrote that, on or about [REDACTED], she was told that MORC was not searching for a new roommate and, instead, would be dissolving Appellant's current residence and seeking an empty bed for him in one of their unlicensed homes. (Exhibit 3, page 12).
12. The Recipient Rights complaint then stated that MORC staff tentatively identified a possible new home for Appellant, and that Appellant's guardian agreed to a meeting. (Exhibit 3, page 12).
13. Appellant's mother also wrote in the Recipient Rights complaint that, on [REDACTED], after not having hearing from Appellant's supports coordinator since early December, Appellant's mother requested an update and, on [REDACTED], the supports coordinator contacted her about her availability for a meeting on [REDACTED]. (Exhibit 3, pages 12-13).
14. In the conclusion of the Recipient Rights complaint, Appellant's mother

Docket No. 15-004944 CMH
Decision and Order

wrote that Appellant's lease expires [REDACTED] and that she was requesting assistance and interventions that would allow Appellant to live in current living arrangement until a new, proper, and mutually-agreeable residence is located. (Exhibit 3, page 13).

15. On [REDACTED], OCCMHA also opened a grievance case for Appellant and, on [REDACTED] OCCMHA sent Appellant's mother/guardian written notice that a Local Appeal has been filed with it on her behalf. (Exhibit 3, page 18; Testimony of Daley).
16. Appellant's roommate moved out on [REDACTED]. (Exhibit A, page 29).
17. That same day, MORC sent Appellant's guardians written notice of a "Limited Authorization" of CLS. (Exhibit 1, pages 3-4; Exhibit 3, pages 19-20; Exhibit A, pages 6-7).
18. Specifically, that notice stated: "Non-standardized per diem in current residence is authorized through [REDACTED]. Residential options with 24/7 shared supports have been and will continue to be offered thru [sic] this period." (Exhibit 1, page 3; Exhibit 3, page 19; Exhibit A, page 6).
19. The notice also informed Appellant's guardians of their right to request a Medicaid Fair Hearing with request to the limited authorization. (Exhibit 1, page 3; Exhibit 3, page 19; Exhibit A, page 6).
20. Since that time, Appellant has been getting 1:1 CLS, 24 hours a day, 7 days a week. (Testimony of Browning).
21. On [REDACTED], MORC also sent Appellant's guardians written notice that their request for "Housing Assistance" had been denied. (Exhibit A, pages 8-9).
22. Specifically, the denial notice stated: "Your request for housing assistance is denied as this is not a covered benefit unless an individual is transitioning to a lesser restrictive setting." (Exhibit A, page 8).
23. The denial notice also informed Appellant's guardians of their right to request a Medicaid Fair Hearing with request to the denial. (Exhibit A, page 8).
24. MORC and Appellant's guardians subsequently worked together to locate a new, shared residence with two other roommates for Appellant, but they were unsuccessful and no viable option has been located yet. (Testimony of Appellant's representative; Testimony of Kruger; Testimony of Browning).
25. Appellant's guardians were also interested in having a new roommate

move into Appellant's current residence, but MORC does not want to pursue that option at this time because a shared living arrangement with two other roommates would be a more cost-effective method of meeting Appellant's needs. (Testimony of Appellant's representative; Testimony of Kruger).

26. OCCMHA's Office of Recipient Rights subsequently substantiated Appellant's complaint and found that MORC failed to ensure that a person-centered planning process was used to develop a written IPOS in partnership with the recipient regarding his necessary housing supports. (Exhibit 3, pages 14-17).
27. The Office of Recipient Rights also recommended that MORC review the applicable policies and meet with Appellant's guardians as soon as possible to complete an IPOS Review that documents OCCMHA's policy regarding roommates and housing supports. (Exhibit A, page 17).
28. The Office of Recipient Rights further identified the action taken: "MORC Support Coordinators will be retrained on ██████████ that changes to services (including the process of incorporating changes in housing needs and housing goals) in the IPOS must be completed through a Periodic Review utilizing the Person Centered Process." (Exhibit 3, page 17).
29. On ██████████, an IPOS meeting was held. Participants included Appellant, his mother/guardian, and his supports coordinator. (Exhibit A, page 26).
30. The IPOP that was developed at that meeting was to be effective from ██████████ through ██████████. (Exhibit A, page 26).
31. The IPOS included a goal of having Appellant continue in a safe and loving home that is capable of meeting his physical and emotional needs and that will continue to increase his sense of companionship, connection, and community. (Exhibit A, page 5).
32. With respect to that goal, the IPOS also noted that, as Appellant has demonstrated the ability to live with others and does not have a medical necessity to reside alone, MORC will refer him to other settings that will meet his needs. (Exhibit A, page 30).
33. The IPOS also noted that Appellant's CLS in an unlicensed setting at a non-standard per diem rate will continue through ██████████. (Exhibit A, page 30).
34. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Exhibit A, pages 1-5).

Docket No. 15-004944 CMH
Decision and Order

35. On [REDACTED], OCCMHA sent Appellant's mother/guardian a letter notifying her of the outcome of the grievance she filed on [REDACTED]. (Exhibit A, pages 2-3).
36. The letter also stated that, in early [REDACTED], an IPOS was developed which contains a housing goal and that MORC will continue to work with Appellant's family to finalize a successful transition plan for moving to an appropriate living setting. (Exhibit A, page 2).
37. The letter further stated that, as the grievance was completed on [REDACTED], which was 84 days from the date it was opened, Appellant's guardian had the right to request a Medicaid Fair Hearing. (Exhibit A, pages 2-3).
38. On [REDACTED] MORC sent Appellant's guardians another written notice of a "Limited Authorization". (Exhibit A, pages 4-5).
39. Specifically, that second notice stated: "Non-standardized per diem in current residence is authorized through [REDACTED] Residential options with 24/7 shared supports have been and will continue to be offered thru [sic] this period." (Exhibit A, page 4).
40. The second notice also informed Appellant's guardian of their right to request a Medicaid Fair Hearing with request to the limited authorization. (Exhibit A, page 4).
41. Appellant's services have continued at the non-standard, per diem rate while this matter is pending. (Exhibit 3, page 28).

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 statutes, 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

Docket No. 15-004944 CMH
Decision and Order

directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

Additionally, 42 CFR 430.10 states:

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 also 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...

42 USC 1396n(b)

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 (DHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

Here, Appellant's guardians assert that they were appealing (1) the limited authorization of CLS; (2) the denial of housing assistance with the financial burden of paying for the entire two-bedroom apartment themselves now that Appellant's roommate has moved out; and (3) the failure of OCCMHA and MORC to work with them in finding a new residence or new roommate for Appellant. The first two of those issues arise from the negative action notices sent to Appellant's guardians on January 30, 2015 while the third issue was raised in a grievance and Recipient Rights

complaint.

On appeal, Appellant bears the burden of proving by the preponderance of the evidence that OCCMHA/MORC erred.

With respect to Appellant's guardians' specific request that MORC work with them to find a new residence or a new roommate for Appellant, the undersigned Administrative Law Judge finds that he lacks jurisdiction over that issue. This issue was first brought as a grievance and, while OCCMHA correctly notes that an action giving rise to an right to a Medicaid Fair Hearing under 42 CFR 438.400 includes the failure to dispose of grievance within the time frame provided in 42 CFR 438.408(b), Appellant's request for hearing was filed prior to the letter notifying him of the failure to dispose of the grievance timely. Moreover, Appellant's grievance has already been substantiated and addressed by the OCCMHA's Recipient Rights office, and there is no separate action for the undersigned Administrative Law Judge to affirm or reverse.

With respect to Appellant's request for housing assistance, the applicable version of the MPM states in part:

17.3.F. HOUSING ASSISTANCE

Housing assistance is assistance with short-term, interim, or one-time-only expenses for beneficiaries transitioning from restrictive settings and homelessness into more independent, integrated living arrangements while in the process of securing other benefits (e.g., SSI) or public programs (e.g., governmental rental assistance and/or home ownership programs) that will become available to assume these obligations and provide needed assistance.

MPM, January 1, 2015 version
Mental Health/Substance Abuse Chapter, page 127

Given that policy and the undisputed evidence in this case, the denial of housing assistance was proper. Appellant's guardians were seeking assistance in paying for the entire two-bedroom apartment themselves now that Appellant's roommate has moved out, but such expenses do not meet the criteria for housing assistance as they would not be used for the purpose of transitioning Appellant to a less restrictive setting, as required by policy.

However, with respect to the "Limited Authorization" of CLS, the undersigned Administrative Law Judge finds that the decision of OCCMHA and MORC to only authorize the around-the-clock 1:1 CLS for a limited period must be reversed.

It is undisputed in this case that Appellant needs supports 24 hours a day, 7 days a week, but that not all of those supports need to be provided on a 1:1 basis and that

Docket No. 15-004944 CMH
Decision and Order

Appellant can live with and share support hours with other beneficiaries in a shared living arrangement.

It is also undisputed that, especially after Appellant's Recipient Rights complaint was substantiated, the parties have worked together to try and locate a new living arrangement for Appellant, but that there have been unsuccessful and that no viable options have been located yet. MORC staff also testified that they will continue to work with Appellant to locate a new shared living arrangement.

Regardless of where Appellant lives in the future, the OCCMHA and MORC must provide medically necessary services sufficient in amount, scope and duration to achieve their purpose in his current living arrangement and it has offered no basis for terminating or limiting the authorization of Appellant's current services. Instead, their witnesses concede that Appellant still requires around-the-clock supports in his current arrangement and that, while Appellant's guardians are willing to move him, MORC has not presented any viable or appropriate living arrangements for Appellant to move to at this time.

If the circumstances in this case change or the OCCMHA and MORC decide to reduce Appellant's services in the future, then they can send Appellant the required written advance notice of their decision and his right to appeal that decision. With respect to the limited authorization at issue in this case, however, the decision of OCCMHA and MORC to only authorize the around-the-clock 1:1 CLS for a limited period must be reversed given the record in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that:

- Appellant's claim that OCCMHA and MORC improperly failed to work with them in finding a new residence or new roommate for Appellant must be dismissed for lack of jurisdiction.
- OCCMHA and MORC properly denied Appellant's request for housing assistance
- OCCMHA and MORC improperly limited Appellant's current authorization of CLS.

IT IS THEREFORE ORDERED that:

The Respondent's decision with respect to the limited authorization of CLS is **REVERSED**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

**** NOTICE ****

The Appellant may request a rehearing or reconsideration, or appeal the Dismissal Order to Circuit Court within 30 days of the receipt of the Order