

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

P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 15-011655 CMH

██████████

██████████

██████████

Appellant

_____ /

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 Appellant's request for a hearing.

After due notice, an in-person hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appellant's aide, was also present to assist her, but did not otherwise participate in the hearing. ██████████ Fair Hearing Officer, appeared on behalf of the Respondent ██████████ ██████████ ██████████, Program Administrator, testified as a witness for Respondent.

ISSUE

Did ██████████ properly deny Appellant's request for additional Community Living Supports (CLS)?¹

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 who has been diagnosed with spinal muscular atrophy and adjustment disorder with anxiety. (Exhibit 2, pages 2-3; Exhibit C, page 1).
2. Due to her conditions, Appellant requires around-the-clock care or supervision. (Exhibit 2, pages 2-3; Testimony of Appellant; Testimony of Respondent's Program Administrator).

¹ Appellant's request for hearing also identified an issue involving a change in her self-determination budget from a per diem budget to an hourly budget. However, during the hearing, Appellant expressly stated on the record that the issue was no longer in dispute.

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3. Appellant has been authorized services from Respondent through the Habilitation Supports Waiver (HSW), including █████ hours per week of Community Living Supports (CLS). (Exhibit D, pages 1-2, 4; Testimony of Respondent's Program Administrator).
4. Appellant is also approved for █████ hours per week of Home Help Services (HHS) through another Medicaid program administered by the Department of Health and Human Services (DHHS). (Testimony of Appellant; Testimony of Respondent's Program Administrator).
5. As Appellant had a Medicaid spend-down/deductible, her Medicaid coverage was inactive at the beginning of each month and her HHS could not be provided until that spend-down was met and her Medicaid scope of coverage changed. (Testimony of Appellant; Testimony of Respondent's Program Administrator).
6. Appellant requested an additional █████ hours per week of CLS through Respondent. (Exhibit C, page 2; Testimony of Appellant; Testimony of Respondent's Program Administrator).
7. On █████ █████ █████, during a telephone call, Appellant's supports coordinator informed Appellant that increased CLS hours cannot be provided for days when Appellant's spend-down has not been met and that the authorization of CLS would therefore remain at █████ hours per week. (Exhibit C, page 1).
8. On ██████████, Appellant met with Respondent's Program Administrator in the administrator's office. (Exhibit C, page 2).
9. At that time, Appellant again requested an increase in CLS to be used at the beginning of each month to cover days when Appellant was not receiving HHS because her spend-down had not yet been met. (Exhibit C, page 2; Testimony of Respondent's Program Administrator).
10. The Program Administrator then indicated that Appellant's request would be reviewed and Appellant would receive written notice of Respondent's decision. (Exhibit C, page 2).
11. On ██████████ Respondent sent Appellant written notice that her request for an additional █████ hours of CLS per week was denied as there had been no change in need and her needs are being met by █████ hours of CLS per week. (Exhibit B, pages 1-2).
12. On ██████████ the Michigan Administrative Hearing System (MAHS0 received the request for hearing filed by Appellant in this matter. (Exhibit 1, pages 1-3).

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 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 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

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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, as discussed above, Appellant has been receiving CLS through the HSW. With respect to such services, the Medicaid Provider Manual (MPM) provides:

Community Living Supports (CLS) facilitate an individual's independence, productivity, and promote inclusion and participation. The supports can be provided in the 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 non-vocational 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.

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- 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);
 - 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.

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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 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, 2015 version
Mental Health/Substance Abuse Chapter, pages 97-98

Here, Respondent denied Appellant's request for an additional ██████ hours of CLS per week. In support of that determination, Respondent's witness testified that, while Appellant requires support ██████r hours per day, there was no change in Appellant's condition or circumstances that would warrant an increase in CLS. She also noted that, if Appellant's request was approved, Appellant would be improperly receiving more than ██████hours of supports per day and that Appellant already has the flexibility to use her approved CLS hours as needed. She further testified that

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Appellant only based her request on a need to replace her approved HHS hours when those HHS were not being provided due to an unmet spend-down and inactive Medicaid, but that there is no basis in the policy for doing so and that the issue may have resolved on its own as Appellant will no longer have a spend-down in the future.

In response, Appellant testified that, regardless of any past spend-down issues or whether she will even have a spend-down in the future, she requires around-the-clock supports. She also testified that she requested the increase in CLS in order to ensure that she has such around-the-clock supports through a combination of HHS and CLS. She further testified that the additional CLS hours would replace current supports that Respondent has deemed to be natural supports, which in fact are merely one of Appellant's paid caregiver providing unpaid care for approximately thirty minutes per day. According to Appellant's testimony, she has no natural supports and it is unfair to expect or require her paid caregiver to provide unpaid care. Appellant also testified that her request for an increase would put her past ██████████r hours per day of services, but that is only because of the way her monthly HHS is calculated, which assumes all months are ██████████days long.

Appellant bears the burden of proving by the preponderance of the evidence that the Respondent erred in denying the request for additional CLS. Moreover, in reviewing Respondent's decision, the undersigned Administrative Law Judge is limited to reviewing the decision in light of the information available at the time the decision was made.

In this case, Appellant's needs are undisputed, but Appellant's request for additional CLS was not based on any change in her medical condition and was instead based on a request to cover Appellant's needs and replace Appellant's HHS on days when those HHS are not authorized due to Appellant's unmet spend-down. However, while the above policy provides that CLS may be used to complement HHS or may be used for those activities while the beneficiary awaits determination by DHHS of the amount, scope and duration of HHS, those provisions do not apply in this case as Appellant does not want a temporary authorization and was seeking additional CLS to cover all days at the beginning of each month when HHS was not provided because her Medicaid spend-down had not been met and her coverage was inactive. Assuming that providing the Medicaid-covered service of CLS on days where Appellant's Medicaid coverage is inactive due to an unmet spend-down is even proper, there is no basis in policy for approving CLS to replace HHS in those circumstances.

Appellant also argues that the request for additional CLS was based in part on the need to replace the unpaid care currently being provided by one of Appellant's caregivers and that has improperly been identified as natural supports by Respondent. It is undisputed in this case that Appellant requires around-the-clock supports and that her current authorizations of HHS and CLS only provide approximately ██████████ hours per day of services. However, it does not appear that Appellant identified such a basis for her request and it was therefore never reviewed by Respondent. Appellant testified that

she believes she did tell Respondent that she needed the additional hours to replace the unpaid support and to ensure that Appellant receives the around-the-clock coverage that she needs, but neither the supports coordinator's nor the Program Administrator's Progress Notes reflect such a request and, instead, they only state that the request was being made to cover the days when Appellant's spend-down was not met. Respondent's Program Administrator also credibly testified that Appellant never told her that the request was for that second purpose. Given that credible testimony, in addition to the progress notes made at the time the request was made, the undersigned Administrative Law Judge finds that Appellant did not identify any second basis for her request at the time it was made. Moreover, as the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information available at the time the decision was made, he also concludes that Appellant cannot meet her burden of proof by raising that argument now.

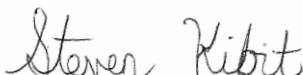
To the extent Appellant wishes to have additional CLS to replace what she believes the Respondent has improperly deemed to be natural supports, she may always request such services in the future and, if the request is denied, request an administrative hearing. With respect to the request at issues in this case, however, the undersigned Administrative Law Judge finds that Appellant has failed to meet his burden of proof and that Respondent's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Appellant's request for additional CLS.

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.



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

Date Signed: ██████████

Date Mailed: ██████████

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cc:

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***** 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.