



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 15-011929
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 hearing for hearing filed on Petitioner’s behalf.

After due notice, a telephone hearing was held on [REDACTED] [REDACTED] [REDACTED], Petitioner’s mother and co-legal guardian, appeared and testified on Petitioner’s behalf. [REDACTED], Petitioner’s father and co-legal guardian, further testified on Petitioner’s behalf and [REDACTED], a family friend, was also present. [REDACTED], Fair Hearings Officer, appeared and testified on behalf of the Respondent ([REDACTED]).¹ [REDACTED] Deputy Director at [REDACTED], and [REDACTED] Program Administrator at [REDACTED] [REDACTED], also testified as witnesses for Respondent.

On [REDACTED], an order was issued in this matter dismissing the case for a lack of jurisdiction. However, upon further review, it was determined that the order of dismissal was issued in error and the dismissal was vacated in a subsequent order issued on [REDACTED]. A hearing was also scheduled for [REDACTED].

On [REDACTED] Petitioner’s representative requested that the hearing be held in-person and it was subsequently rescheduled for [REDACTED].

On [REDACTED] [REDACTED] [REDACTED], the in-person hearing was held as scheduled. [REDACTED], Petitioner’s mother and co-legal guardian, appeared and testified on Petitioner’s behalf. [REDACTED], Fair Hearings Officer, represented Respondent. [REDACTED], former Interim Director at [REDACTED], and [REDACTED] Program Administrator at [REDACTED], testified as witnesses for Respondent. During the hearing, Petitioner entered fifteen exhibits that were entered into the record

¹ Since this case began, [REDACTED] was replaced by the [REDACTED].

(Petitioner's Exhibits A-O) while Respondent offered fourteen exhibits (Respondent's Exhibits A-N) that were entered into the record.

ISSUE

Did Respondent properly reduce Petitioner's individual budget and pay rate for Community Living Supports (CLS) workers?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Respondent is a Community Mental Health Services Program (CMHSP) affiliated with a Prepaid Inpatient Health Plan (PIHP), the Community Mental Health Partnership of Southeast Michigan.
2. Petitioner is a [REDACTED]-year-old Medicaid beneficiary who has been receiving services through Respondent pursuant to the Habilitation Supports Waiver (HSW). (Respondent's Exhibit C, page 1; Testimony of Petitioner's representative).
3. In [REDACTED], Petitioner, his guardian, and representatives of [REDACTED] signed an Individual Plan of Service (IPOS) that was to be effective for the time period of [REDACTED] through [REDACTED]. (Respondent's Exhibit C, pages 1-12).
4. As part of that IPOS, Petitioner would continue to receive eight-four (84) hours per week of CLS through a self-determination agreement. (Respondent's Exhibit C, page 2; Testimony of [REDACTED] Program Administrator).
5. Within the self-determination program, Petitioner had an individual budget developed in part based on the number of CLS he was authorized for and an hourly rate assigned to those hours. (Testimony of Respondent's Interim Director).
6. The hourly rate used for CLS in the individual budget was not all-inclusive and the individual budget also contained additional funds allocated for worker's compensation, transportation, community participation, taxes, and training. (Testimony of Respondent's Interim Director).

7. On [REDACTED] Respondent sent a letter to self-determination participants, including Petitioner, that provided that:

[REDACTED] will be reducing our Community Living Support (CLS) rate for services paid and supported through a Fiscal Intermediary (FI). This change is necessary to ensure that [REDACTED] rate is the same as our regional partners and to ensure that we are being fiscally responsible.

The new rate will be [REDACTED] per hour, which includes worker's compensation, transportation, community participation, taxes, and training. While this is not a reduction in your current level of services, it may reduce the amount you can pay staff . . . We want to allow you time to process this change and work with your clinical team, therefore this will not go effect until [REDACTED].

Your [REDACTED] [REDACTED] [REDACTED] [REDACTED] clinical staff will be contacting you within the next 2 business days to begin developing a CLS site plan that will guide your staff on the hours and days of service you need . . .

*Petitioner's Exhibit J, page 1
Respondent's Exhibit L, page 2*

8. On [REDACTED], the change to the rate/method of calculation of Petitioner's individual budget took effect. (Testimony of Petitioner's representative; Testimony of Respondent's Interim Director).
9. The new rate and its inclusion of worker's compensation, transportation, community participation, taxes and training, lead to both a decrease in Petitioner's overall budget and the hourly rate he could pay caregivers. (Testimony of Petitioner's representative; Testimony of [REDACTED] S Program Administrator).
10. Petitioner's IPOS was not updated in [REDACTED] and he was not informed of any right to request an administrative hearing at that time. (Testimony of Petitioner's representative; Testimony of Respondent's Interim Director).

11. On [REDACTED] [REDACTED] Respondent received a Memorandum from the Department of Health and Human Services informing it that the Department had become aware of the decision to reduce the CLS rate effective [REDACTED] and that Respondent's decision did not conform to the approved Budget Authority Process in the HSW application. (Respondent's Exhibit L, page 3).

12. The Memorandum from the Department also provided that:

As a result, we are requesting that the [REDACTED] reverse this decision immediately and retroactively to [REDACTED] for all SD and choice voucher arrangements effected by this action . . .

The Centers for Medicare and Medicaid Services (CMS) will be informing the family/participant of this action and instructing them to work within the PCP process if there a need for any adjustments.

Respondent's Exhibit L, page 4

13. Respondent did not reverse the [REDACTED] decision in this case following the receipt of the Memorandum from the Department. (Respondent's Exhibit L, page 5; Testimony of Petitioner's representative).

14. On [REDACTED], representatives from [REDACTED] did meet with Petitioner's representative and offered the reduced all-inclusive rate, which Petitioner's representative declined. (Testimony of Petitioner's representative; Testimony of [REDACTED] Program Administrator).

15. After Petitioner's representative declined the reduced all-inclusive rate, Petitioner's IPOS was amended to reflect "a change in rate for this Self-Determination budget which is effective [REDACTED] for the duration of the IPOS." (Respondent's Exhibit C, page 2).

16. On [REDACTED], Respondent also sent Petitioner a written Notice and Hearing Rights regarding a change in his IPOS. (Respondent's Exhibit B, pages 1-2).

17. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter.

18. On [REDACTED] and [REDACTED], staff from Respondent attempted to contact Petitioner's guardians without success. (Respondent's Exhibit K, pages 1-2).
19. On [REDACTED], an administrative hearing was held in this matter with the undersigned Administrative Law Judge.
20. At and after that hearing, Respondent offered Petitioner an all-inclusive rate of [REDACTED] per hour, which she accepted. (Testimony of Petitioner's representative; Testimony of [REDACTED] Program Administrator).
21. An all-inclusive rate of [REDACTED] per hour still constituted a reduction in Petitioner's individual budget and the rate he could pay his CLS workers from his pre-[REDACTED] [REDACTED] amounts. (Testimony of Petitioner's representative; Testimony of [REDACTED] Program Administrator).
22. On [REDACTED], the undersigned Administrative Law Judge issued an order dismissing this case for a lack of jurisdiction.
23. On [REDACTED], the undersigned Administrative Law Judge issued an order vacating that dismissal.
24. A telephone hearing was also scheduled for [REDACTED].
25. On [REDACTED], Petitioner's representative requested that the hearing be held in-person and it was subsequently rescheduled for [REDACTED].
26. On [REDACTED] the in-person hearing was held as scheduled.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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...

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) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

Here, as discussed above, Petitioner has been receiving CLS through Respondent pursuant to the HSW. With respect to CLS through the HSW, 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.
- 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.

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, October 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 97-98*

Within the HSW, Petitioner receives his CLS through a self-determination agreement. Regarding the system of self-determination, the approved policies in the HSW application provide as an overview that:

Michigan has a long history of supporting opportunities for participant self-direction. In the early 1990's, as one of the eight Community Supported Living Arrangements (CSLA) states, Michigan collaborated with consumers of developmental disability services, their family members, advocates, providers, and other stakeholders to develop and operate a variety of Medicaid-funded services and supports pilots. These pilots were tightly governed under a values template of consumer choice and control. In 1995, when the Congressional "sun" set on the federal CLSA program, all of the CSLA consumers and as many of that program's self-directed features as the state was able to negotiate within its renewal were incorporated within this Waiver program. In 1996, the Michigan legislature made person-centered planning a requirement for all participants receiving services and supports under the Mental Health Code. Since 1997, when Michigan was awarded its Robert Wood Johnson Self-Determination demonstration grant, MDCH has continued to build the demand and capacity for arrangements that support self-determination. Elements of participant direction are embedded in both policy and practice from Michigan's Mental Health Code, the Department's Person-Centered Policy Practice Guideline and Self-Determination Policy and Practice Guideline, the contract requirements in the contracts between the state and the PIHPs, and technical

assistance at the state level for multiple methods for implementation by the PIHP.

The Self-Determination Policy and Practice Guideline requires that PIHP/CMHSPs “assure that full and complete information about self-determination and the manner in which it may be accessed and applied is available to each consumer. This shall include specific examples of alternative ways that a consumer may use to control and direct an individual budget, and the obligations associated with doing this properly and successfully.” (I.C. page 4). Moreover, the policy states: “A CMHSP shall actively support and facilitate a consumer’s application of the principles of self-determination in the accomplishment of his/her plan of services.” (I.E.. page 4).

(a) The nature of the opportunities afforded to participants

Waiver participants have opportunities for both employer and budget authority. Participants may elect either or both budget authorities and can direct a single service or all of their services for which participant direction is an option. The participant may direct the budget and directly contract with chosen providers. The individual budget is transferred to a fiscal intermediary (this is the Michigan term for an agency that provides financial management services or FMS) which administers the funds and makes payment upon participant authorization.

There are two options for participants choosing to directly employ workers: the Choice Voucher System and Agency with Choice. Through the first option, the Choice Voucher System, the participant is the common law employer and delegates performance of the fiscal/employer agent functions to the fiscal intermediary, which processes payroll and performs other administrative and support functions. The participant directly recruits, hires and manages employees. Detailed guidance to PIHP entities is provided in the Choice Voucher System Technical Advisory. In the Agency with Choice model, participants may contract with an agency with choice and split the employer duties with the agency. The participant is the managing employer and has the authority to select, hire, supervise and terminate workers. As co-employer, the agency is the common law employer, which handles the administrative and human

resources functions and provides other services and supports needed by the participant. The agency may provide assistance in recruiting and hiring workers. Detailed guidance to PIHP entities is provided in the Agency with Choice Technical Advisory. A participant may select one or both options. For example, a participant may want to use the Choice Voucher System to directly employ a good friend to provide CLS during the week and Agency with Choice to provide CLS on the weekends.

(b) how participants may take advantage of these opportunities

Information on the self-determination is provided to all participants who enroll or are currently enrolled in the HSW. Participants interested in arrangements that support self-determination start the process by letting their supports coordinator or other chosen qualified provider know of their interest. The participants are given information regarding the responsibilities, liabilities and benefits of self-determination prior to the PCP process. An individual plan of service (IPOS) will be developed through this process with the participant, supports coordinator or other chosen qualified provider, and allies chosen by the participant. The plan will include the HSW waiver services needed by and appropriate for the participant. An individual budget is developed based on the services and supports identified in the IPOS and must be sufficient to implement the IPOS. The participant will choose service providers and have the ability to act as the employer. In Michigan, PIHPs provide many options for participants to obtain assistance and support in implementing their arrangements.

c) the entities that support individuals who direct their services and the supports that they provide PIHPs are the primary entities that support participants who direct their services. Supports coordinators, supports coordinator assistants, or independent support brokers (or other qualified provider chosen by the participant) are responsible for providing support to participants in arrangements that support self-determination by working with them through the PCP process to develop an IPOS and an individual budget. The supports coordinator, supports coordinator assistant, or independent supports broker is responsible for obtaining authorization of the budget and plan and monitoring the plan,

budget and arrangements. Supports coordinators, supports coordinator assistants, or independent supports brokers (or other qualified provider chosen by the participant) make sure that participants receive the services to which they are entitled and that the arrangements are implemented smoothly. Participants are provided many options for Independent Advocacy, through involvement of a network of participant allies and independent supports brokerage, which are described in Section E-1k below.

Through its contract with MDCH, each PIHP is required to offer information and education to participants on participant direction. Each PIHP also offers support to participants in these arrangements. This support can include offering required training for workers, offering peer-to-peer discussion forums on how to be a better employer, or providing one-on-one assistance when a problem arises.

Each PIHP is required to contract with one or more fiscal intermediaries to provide financial management services.

Fiscal Intermediary Services is a service in the state's §1915(b) Waiver. The fiscal intermediary performs a number of essential tasks to support participant direction while assuring accountability for the public funds allotted to support those arrangements. The fiscal intermediary has four basic areas of performance:

- function as the employer agent for participants directly employing workers to assure compliance with payroll tax and insurance requirements;
- ensure compliance with requirements related to management of public funds, the direct employment of workers by participants, and contracting for other authorized goods and services.
- facilitate successful implementation of the arrangements by monitoring the use of the budget and providing monthly budget status reports to participant and agency; and
- offer supportive services to enable participants to direct the services and supports they need.

*HSW Application
Appendix E-1: Overview (1 of 13)
(Emphasis added)*

Furthermore, with respect to the participant-directed budget in the self-determination program, the approved policies in the HSW application also provide that

An individual budget includes the expected or estimated costs of a concrete approach of obtaining the mental health services and supports included in the IPOS (SD Guideline II.C.). Both the individual plan of service (IPOS) and the individual budget are developed in conjunction with one another through the person-centered planning process (PCP) (SD Guideline II. A.). Both the participant and the PIHP must agree to the amounts in the individual budget before it is authorized for use by the participant. This agreement is based not only on the amount, scope and duration of the services and supports in the IPOS, but also on the type of arrangements that the participant is using to obtain the services and supports. Those arrangements are also determined primarily through the PCP process.

Michigan uses a retrospective zero-based method for developing an individual budget. The amount of the individual budget is determined by costing out the services and supports in the IPOS, after a IPOS that meets the participant's needs and goals has been developed. In the IPOS, each service or support is identified in amount, scope and duration (such as hours per week or month). The individual budget should be developed for a reasonable period of time that allows the participant to exercise flexibility (usually one year).

Once the IPOS is developed, the amount of funding needed to obtain the identified services and supports is determined collectively by the participant, the mental health agency (PIHP or designee), and others participating in the PCP process.

This process involves costing out the services and supports using the rates for providers chosen by the participant and the number of hours authorized in the IPOS. The rate for directly employed workers must include Medicare and Social Security Taxes (FICA), Unemployment Insurance, and Worker's Compensation Insurance. The individual budget is authorized in the amount of that total cost of all services and supports in the IPOS. The individual budget must include the fiscal intermediary fee if a fiscal intermediary is utilized.

Participants must use a fiscal intermediary if they are directly employing workers and/or directly contracting with other providers that do not have contracts with the PIHPs. If a participant chooses to contract only with providers that are already under contract with the PIHP, there is no requirements [sic] that a fiscal intermediary be used.

Fiscal intermediary is a §1915(b) waiver service and is available to any participant using a self-determination arrangement. Each PIHP develops a contract with the fiscal intermediary to provide financial management services (FMS) and sets the rate and costs for the services. The average monthly fee has ranged from \$75.00 to \$125.00. Actual costs for the FMS will vary depending on the individual's needs and usage of FMS, as well as the negotiated rate between the PIHP and fiscal intermediary.

*HSW Application
Appendix E-2: Opportunities for Participant-Direction (3 of 6)
(Emphasis added)*

Materials provided by the PIHP include written information on the development of the individual budget. During the planning process, a participant is to be provided clear information and explanation of current service costs and allotments, along with information that provides guidance on developing and utilizing provider rates that would be applied by the participant during individual budget implementation.

As noted in section E-2(b)(ii) above, the budget is developed in conjunction with the development of the IPOS, using the PCP process, or is determined as applied to a pre-existing, sufficient IPOS, using the PCP process. Budget authorization is contingent upon the participant and the PIHP entity reaching agreement on the amount of the budget and on the methods that will, or may, be applied by the participant to implement the plan and the individual budget. The budget will be provided to the participant in written form, as an attachment to the Self-Determination Agreement that outlines the expectations and obligations of the participant and the PIHP. The participant's plan is also attached to the agreement.

The participant's supports coordinator, supports coordinator assistant, or independent supports broker (or other qualified

provider selected by the participant) are expected to provide assistance to the participant in understanding the budget and how to utilize it. In situations where the participant also has an independent supports broker, the broker will assist the participant to understand and apply the budget. The participant may seek an adjustment to the individual budget by requesting this from their supports coordinator or other chosen qualified provider. The supports coordinator, supports coordinator assistant, or independent supports broker (or other qualified provider selected by the participant) will be expected to assist the participant to convene a meeting including the participant's chosen family members and allies, and to assure facilitation of a PCP process to review and reconsider the budget. A change in the budget is not effective unless the participant and the PIHP have agreed to the changes.

HSW Application
Appendix E-2: Opportunities for Participant-Direction (4 of 6)
(Emphasis added)

The amount of the individual budget must be sufficient to provide a defined amount of resources. It must also be written to allow flexibility in its use, which means that an participant can decide when services and supports are used and make some adjustments between budget line items. The SD Guideline describes types of flexibility (SD Guideline II.E.4):

Adjustments that do not require a Modification to the Individual Budget:

Unless an adjustment deviates from the goals and objectives in the participant's IPOS, the participant is not required to obtain permission from the mental health agency (PIHP or designee) or provide advance notification of an intended adjustment. "The [participant] may adjust the specific application of CMHSP-authorized funds within the budget between budgetary line items and/or categories in order to adjust his/her specialty mental health services and supports arrangements as he or she deems necessary to accomplish his/her IPOS." (SD Guideline II.E.4.a.) The IPOS must be written in a way that contemplates and plans for the manner in which the participant may use the services and supports. Amounts, scopes and durations may be written in ranges or a length of time that makes flexibility possible (a month or a

quarter). Services and supports that are similar and may be substituted for one another should be identified as well as services and supports for which there is no substitution. Adjustments in this manner should be communicated to the mental health agency (PIHP or designee) in a timely manner.

Adjustments that Require a Modification to the Individual Budget:

Sometimes, a participant wants to make an adjustment that fundamentally alters the IPOS (for example, substituting one service for another service that is not similar, forgoing services and supports, or using services and supports not authorized). If the adjustment “does not serve to accomplish the direction and intent of the person’s IPOS, then the IPOS must be appropriately modified before the adjustment may be made.” (SD Guideline II.E.4.d). In this situation, a modification can often be made over the phone between the participant and his or her supports coordinator, supports coordinator assistant, or independent supports broker (or other qualified provider selected by the participant). The change should be accomplished as expeditiously as possible. Larger changes may need to be made through the PCP process.

The mental health agency (PIHP or designee) must provide the participant with information on how to request a Medicaid Fair Hearing when the participant’s Medicaid-funded services are changed, reduced or terminated as a result of a reduction in the individual budget or denial of the budget adjustment.

*HSW Application
Appendix E-2: Opportunities for Participant-Direction (5 of 6)
(Emphasis added)*

Here, effective [REDACTED], Respondent changed the method by which Petitioner’s individual budget was calculated and made the hourly rate of [REDACTED] per hour all-inclusive. By doing so, Respondent also reduced Petitioner’s overall budget and the hourly rate he could pay his CLS workers. It did not, however, amend Petitioner’s IPOS or inform Petitioner of any right to request an administrative hearing until [REDACTED] at which point Petitioner did file a request for hearing with MAHS.

In support of Respondent’s decision, its former Interim Director testified that there was no specific change in the amount, scope or duration of Petitioner’s services in this case

and that Respondent instead took a general action with respect to all self-determination participants in order to align its approved CLS rates with neighboring counties that are part of the same PIHP and be fiscally responsible. She did acknowledge that the change constituted a reduction in Petitioner's overall individual budget and the amount he could pay his caregivers in this case, but also noted that, per Departmental guidelines, Respondent has the authority to set the maximum amounts that a person may spend to pay providers of specific services and supports. She further testified that, even if the Department initially disapproved of the process used by Respondent, it later approved of the plan where Respondent engaged in the person-centered planning process; offered the all-inclusive rate pursuant to the authority given to it by the Department; and notified any participants who disagreed of their right to request a hearing.

The [REDACTED] Program Administrator testified regarding the difference between traditional CLS arrangements and self-determination arrangements; and how, in a self-determination arrangement, the Respondent just authorizes CLS hours and the fiscal intermediary turns the authorization into a budget. She also testified as to what the amount, scope and duration of Petitioner's services are and how they have not changed in this case. In going over the budgets and the changes to the budget, the [REDACTED] Program Administrator did clarify that any pre-[REDACTED] budget submitted by Respondent is not the way the budget was structured then and was instead an attempt to recreate the old budget under the new system.

In response, Petitioner's representative testified that Respondent's negative action constituted an arbitrary reduction in Petitioner's individual budget; the rate he could pay caregivers; and the amount, scope and duration of his services. She also testified that, when implementing the negative action, Respondent failed to take into account Petitioner's medical needs, as required by law, and violated Petitioner's right to act as an employer and have authority of his budget. She further testified that the negative action has left Petitioner with insufficient resources to hire or retain qualified and capable workers, especially given the cost of living in [REDACTED] as opposed to neighboring counties. Petitioner's representative also testified that Respondent failed to provide proper notice of its decision or adequate information regarding how Petitioner could request a fair hearing; and that, while the HSW provides that no change in the individual budget can be effective until the participant agrees, Petitioner and his guardian never agreed to the change in this case and Respondent still improperly reduced his budget.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred.

Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has met that burden of proof and that Respondent's decision must therefore be reduced. As provided above, the HSW application expressly states that the individual budget is to be developed through the person-center planning process,

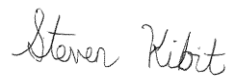
developed for a reasonable amount of time, provided to the participant in written form, and contingent on the parties reaching agreement on the amount of the budget. That all initially occurred in this case as the parties agreed on both an IPOS and an individual budget for the time period of [REDACTED] through [REDACTED]. However, Respondent also decided to unilaterally reduce Petitioner's individual budget during the duration of that plan and, by doing so without the agreement of Petitioner, erred. As provided above, the HSW application expressly states that a "change in the budget is not effective unless the participant and the PIHP have agreed to the changes." HSW Application, Appendix E-2: Opportunities for Participant-Direction (4 of 6). Here, it is clear that the parties agreed to an IPOS and budget for one year and that Petitioner has not agreed to any changes in rates or to the budget during that year. Given Respondent's error, Petitioner has met his burden of proving by a preponderance of the evidence that Respondent erred and the decision at issue in this case must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly reduced Petitioner's individual budget and the rate he could pay CLS workers.

IT IS THEREFORE ORDERED that

Respondent's decision is **REVERSED** and it must reinstate Petitioner's pre-[REDACTED] individual budget.



SK/db

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]