

**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. 15-011934 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 a request for a hearing filed on the minor Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ Appellant's legal guardian, appeared and testified on his behalf. ██████████ the representative's daughter; ██████████ a previous care worker for Appellant; and

██████████ ██████████ Manager of Due Process, represented Respondent ██████████ ██████████, Assistant Director of Community Supports, and ██████████, Self-Determination Coordinator, from Community Living Services of ██████████ (CLS-██████) testified as witnesses for Respondent. ██████████, Assistant Due Process Coordinator at ██████████, was also present for the hearing.

ISSUE

Did ██████████ properly deny Appellant's request for ██████████ miles per week of mileage reimbursement for Appellant's Community Living Supports (CLS) staff?

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 male who has been diagnosed with, among other conditions, cerebral palsy; hypotonia; quadriplegia; prenatal drug exposure; inter-uterine growth retardation, and fetal alcohol syndrome. (Exhibit A, pages 4, 10-12).

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2. Due to his medical conditions and needs, Appellant is dependent on others for all Activities of Daily Living and Instrumental Activities of Daily Living; he is never left unattended; and he must be constantly monitored. (Exhibit A, page 7).
3. Appellant also receives services through the CMH through the Habilitation Supports Waiver (HSW), including Community Living Supports (CLS) and respite care services. (Testimony of Appellant's representative; Exhibit A, page 29).
4. In ██████████, the CMH denied Appellant's guardian's request for █ miles per week of mileage reimbursement for Appellant's CLS staff. (Testimony of Appellant's representative; Testimony of ██████████).
5. Appellant's guardian filed a local appeal regarding that denial and, ultimately, it was ordered that CLS-██████ reimburse some mileage and that the parties reconvene to reassess Appellant's request. (Testimony of Appellant's representative; Testimony of ██████████).
6. Appellant's guardian then submitted additional information and clarified that the CLS would take Appellant to community activities in their cars, but the request for mileage reimbursement was again denied. (Testimony of Appellant's representative; Testimony of ██████████).
7. That denial was also upheld after Appellant filed another local appeal. (Testimony of ██████████).
8. On ██████████, an Individual Plan of Service (IPOS) meeting was held with respect to Appellant's services. (Exhibit A, pages 21-42).
9. During that meeting, a goal of increasing Appellant's participation in community activities, with support from both his family and his CLS staff, was identified and agreed upon. (Exhibit A, page 24).
10. Along with that goal, Appellant's guardian noted that the CLS staff would transport Jarrod in their vehicles to participate in community activities and she requested that █ miles per week of transportation reimbursement be approved. (Exhibit A, page 24; Testimony of Appellant's representative; Testimony of ██████████).
11. However, the approved version of the plan noted that Appellant's family would be responsible for ensuring that the CLS "staff is compensated for the mileage that is incurred for the transportation that is provided in the process of assisting ██████████ to participate in the activities that are described above." (Exhibit A, page 24).

12. Similarly, on ██████████, the CMH sent Appellant's guardian written notice that the request for ██████ miles per week of transportation was denied as the current authorization of services was sufficient in amount, scope, and duration to reasonably meet the outcomes identified in Appellant's plan. (Exhibit A, pages 2-3).
13. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter regarding that denial. (Exhibit 1, page 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 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 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.
- 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.

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As noted by Appellant's guardian, the above policy states that CLS supports include assistance, support and/or training a beneficiary with transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence. She also argues that such assistance is exactly what they are requesting in this case as Appellant's plan expressly includes a goal of increasing Appellant's participation in community activities, with support from both his family and his CLS staff; the requested mileage is for non-family outings, like the type any typical teenager would have; and that taking him out in the community for those outings requires one-on-one support at all times and transportation in a vehicle by CLS staff. Appellant's mother also argues that Appellant will never be a typical teenager or be able to do certain things, such as drive, and that the CLS and mileage reimbursement are both necessary to support his independence and integration into the community.

However, Appellant's need for one-on-one assistance while out in the community and the authorization of CLS in support of the goal of increasing Appellant's participation in community activities are not in dispute in this case. What is in dispute is whether an additional authorization of █ miles per week of mileage reimbursement for Appellant's CLS staff is necessary and appropriate as part of Appellant's CLS services.

Here, given the policies and evidence in this case, the undersigned Administrative Law Judge finds that the CMH's decision to deny Appellant's request for mileage reimbursement was proper. While the policy cited by Appellant's representative identifies assistance with transportation as part of CLS services, the policy also states that CLS provides support to beneficiaries younger than █ in order to provide "skill development" and, consequently, the assistance and support it provides is for training in activities such as transporting to-and-from and among community activities, and not for simply transporting Appellant there directly.

Moreover, as noted by the CMH, it may deny services for which there exists another appropriate, efficacious, and cost-effective support that otherwise satisfies the standards for medically-necessary services and 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. See MPM, April 1, 2015 version, Mental Health/Substance Abuse Chapter, pages 14, 120. Here, Appellant is a fourteen year-old boy and, even if he did not have disabilities, his legal guardian would have to arrange transportation for him to community activities, whether it by public transportation, car or some other method. Accordingly, it is reasonable for the CMH expect her to do the same for Appellant and, to the extent his disabilities present barriers, CLS has been approved to assist with them, whether it be by helping him use public transportation, get in-and-out of a car, or something else.

Other sections of the MPM specifically address mileage reimbursement for CLS workers with respect to other programs. For example, in polices discussing the ██████████ and Community-Based Services

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Waiver ██████████), the MPM expressly provides that “transportation may be reimbursed when separately specified in the individual plan of care and provided in order to enable a child served by the ██████████ to gain access to waiver and other community services, activities, and resources” and that the transportation benefit is provided as mileage reimbursement paid to hourly staff, such as CLS workers, and other clinical/professional staff providers. See MPM, April 1, 2015 version, Mental Health/Substance Abuse Chapter, Children’s Serious Emotional Disturbance, Home and Community-Based Services Waiver Appendix, page a11. Significantly, there is no such provision regarding reimbursement for CLS workers through the HSW or as a B3 service. Accordingly, as the MPM expressly authorizes mileage reimbursement for CLS workers in other programs, but does not do so for the type of CLS at issue in this case, the absence of such language suggests that the transportation reimbursement is not covered here.

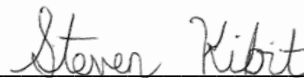
Given the lack of specific authority for mileage reimbursement for CLS workers in the HSW, in addition to the general policies providing that CLS for children in the HSW is for skill development and that it is reasonable to expect that parents of minor children with disabilities will provide the same level of care they would provide to their children without disabilities, the undersigned Administrative Law Judge finds that the CMH proper denied Appellant’s request for mileage reimbursement in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Appellant’s request for ██████████ miles per week of mileage reimbursement for CLS staff.

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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[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.