

**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. 15-011969 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 Appellant's behalf.

After due notice, a telephone hearing was held on ██████████. ██████████ appeared on Appellant's behalf. ██████████, Appellant's mother and legal guardian, and ██████████, one of Appellant's aides, testified as witnesses for Appellant. Appellant; ██████████, a family friend; ██████████, another one of Appellant's aides; and ██████████, Appellant's sister; were also present for Appellant during the hearing. ██████████, Manager of Due Process, represented Respondent ██████████. ██████████, Unit Director for Supports Coordination, and ██████████, Compliance Coordinator, from the ██████████ testified as witnesses for Respondent. ██████████, Assistant Due Process Coordinator at ██████████, was also present for the hearing.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. Appellant is a ██████████ year-old Medicaid Beneficiary who has been enrolled in the Habilitation Supports Waiver (HSW). (Exhibit A, pages 2, 5-6).
2. Due to his medical conditions and disabilities, Appellant requires hands-on assistance with all Activities of Daily Living and Instrumental Activities of Daily Living, as well as monitoring at all times. (Exhibit A, pages 7-8).
3. Historically, Appellant's needs were met through a combination of natural supports; Home Help Services (HHS) through the Department of Health and Human Services (DHHS), vocational supports; CLS paid for by ██████████ and ██████████ at a per diem rate; and fiscal intermediary services. (Exhibit A, page 8; Testimony of ██████████)
4. In ██████████, Appellant's HHS were terminated. (Exhibit A, pages 5-8).
5. Appellant did not request a hearing with respect to that termination. (Testimony of Appellant's mother).
6. She did mention it in another request for hearing that she filed for a separate issue, but failed to appear for the hearing in that case after the separate issue was resolved. (Testimony of Appellant's mother).
7. On ██████████, an Individual Plan of Services (IPOS) meeting was with respect to Appellant's services for the upcoming year. (Exhibit A, pages 2-32).
8. Subsequently, Appellant's guardian was informed that the current per diem CLS authorization would only be approved through ██████████ in order to give ██████████ and ██████████ time to review it. (Exhibit A, page 4).
9. ██████████ also sent a letter to DHHS discussing what Appellant's CLS entailed and how they would not duplicate any HHS. (Testimony of ██████████).
10. On ██████████, a meeting was held with respect to Appellant's plan. (Exhibit A, pages 33-38).

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11. Subsequently, it was determined that, effective ██████████, Appellant would only be approved for █ hours per week of CLS, in addition to his █ hours per week of respite care services and █ hours per week of vocational supports. (Exhibit A, page 35).
12. The CLS was approved through ██████████ and authorized through ██████████'s self-determination program on a quarterly basis in order to give Appellant's guardian some flexibility. (Testimony of ██████████)
13. The amended plan also noted that Appellant's HHS had been stopped pending the receipt of documentation and that Appellant's mother had requested that ██████████ forward certain documentation to the DHHS. (Exhibit A, page 35).
14. The plan further notified Appellant's guardian of her right to appeal. (Exhibit A, pages 37-38).
15. ██████████ continued to assist Appellant's guardian in reapplying for HHS by forwarding documentation to DHHS; engaging in several discussions regarding the difference between HHS and CLS; and providing additional training for Appellant's CLS staff on how to enter their daily notes so that they only reflected the goals of the IPOS and did not suggest a duplication of services with HHS. (Exhibit A, pages 41-47).
16. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter regarding the amount of CLS authorized. (Exhibit 1, pages 1-5).
17. By ██████████, Appellant's guardian used up the entire quarterly authorization of CLS. (Testimony of Appellant's guardian).
18. However, ██████████ has continued to authorize █ hours per week of CLS while this matter is pending. (Testimony of Appellant's representative; Testimony of ██████████).

**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

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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

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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.

*MPM, April 1, 2015 version  
Mental Health/Substance Abuse Chapter, pages 97-98  
(Emphasis added)*

Here, in addition to other services, ██████████ and ██████████ authorized ██████████ hours per week of CLS for Appellant. Moreover, while the previous per diem rate did not authorize a specific number of hours of CLS, it is undisputed that the ██████████ hours per week of CLS he is now receiving is less CLS than what he was receiving before with the per diem rate.

In support of that determination, the CMH's witnesses testified that the amount of CLS services authorized in Appellant's plan is sufficient in amount, scope and duration to meet the goals outlined in his plan. They also noted that CLS does not have the same purpose of HHS and cannot supplant those services. They further testified that, while CLS may be temporarily approved for activities covered by HHS while a beneficiary awaits determination by DHHS regarding the amount of HHS to be approved or is appealing a determination regarding HHS, Appellant's guardian has not requested such a temporary authorization in this case; ██████████ has assisted her while she reapplies for

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HHS; and that any delay in Appellant receiving HHS is caused in part by Appellant's guardian's failure to appeal the earlier termination of HHS and the current HHS case worker's issues with how Appellant's staff fill out their notes.

In response, Appellant's guardian testified that the authorization of █████ hours per week is insufficient because Appellant needs total care around-the-clock due to his disabilities and seizure disorder. Appellant's guardian also described the schedules of Appellant's workers and how the cut in hours has put her in a bind. With respect to HHS, Appellant's guardian further testified that she never appealed the earlier termination of HHS because Appellant's CLS was still meeting his needs at the time, but that she is in the process of reapplying for HHS on Appellant's behalf; Appellant has a new case worker in the Department; and that the new HHS case worker wants documentation from █████


Appellant's representative also argued that, while it appears that █████ and DHHS are arguing about who should be providing the services, it is clear that Appellant needs them and he should not be punished by a dispute among agencies.

Appellant bears the burden of proving by the preponderance of the evidence that the Respondent erred in denying the request for additional CLS.

In this case, while Appellant's needs are undisputed, much of the assistance he seeks is covered by HHS rather than CLS. CLS is for the specific purpose of facilitating an individual's independence, productivity, and community participation by assisting him with assistance such as training and guiding, and it is not for the total, direct care sought by Appellant's guardian. Moreover, neither Appellant's representative nor his guardian offered any evidence contradicting █████'s determination that the CLS authorized is sufficient to meet the specific goals of Appellant's plan that required CLS.

Moreover, 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 seeks additional CLS regardless of whether the HHS are approved or not. Also, Appellant already received a determination regarding HHS, when they were terminated and his guardian did not appeal that determination. Appellant appears to be entitled to HHS, but █████ and █████ did not make that decision and they have provided CLS in lieu of HHS for long enough given Appellant's failure to appeal the termination of HHS and the delay in reapplying for it.

Accordingly, given the evidence and applicable policies, 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.

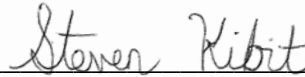
  
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**DECISION AND ORDER**

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 additional CLS.

**IT IS THEREFORE ORDERED** that:

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



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

Date Signed: 

Date Mailed: 

SK/db

cc: 

**\*\*\* 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.