

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

P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 373-4147

IN THE MATTER OF

██████████,

Appellant

Docket No. 15-014851 CMH

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified. ██████████, Case Manager, appeared and testified on Appellant's behalf.

██████████ represented Respondent Genesee County Community Mental Health (CMH or Department or Respondent). ██████████, Utilization Management Coordinator, appeared as witnesses for the Department.

ISSUE

Did the CMH properly calculate Appellant's Community Living Supports (CLS) hours?

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 Medicaid beneficiary.
2. Appellant has been diagnosed with Mild Mental retardation.
3. CMH is under contract with the Department of Health and Human Services (DHHS) to provide Medicaid covered services to people who reside in the CMH service area.
4. Appellant is a ██████ year old Medicaid beneficiary, born ██████████. She resides with her father, brother and minor son.
5. On ██████████, a formal request was made to the GHS Utilization Management Department for the authorization of Community Living

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supports (CLS) in the amount of 50 units per week (12.5 hours per week).

6. CMH conducted an Assessment and determined that Appellant should be eligible to receive 20 units per week (5 hours per week) based upon medical necessity. (Respondent's Exhibit 1)
7. On [REDACTED], the Respondent sent Appellant a Notice of Denial of the 50 hour request.
8. On [REDACTED], Appellant filed a request for a hearing to contest the Respondent's negative action.
9. On [REDACTED], the Appellant requested a local appeal through the Due Process Office.
10. Upon review, it was determined that Appellant should receive CLS in the amount of 34 units per week (8.5 hours per week).
11. CLS hours were increased for grocery lists, menu planning and meal preparation.

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 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...

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 Community Health (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 CFR 440.230.

The *Medicaid Provider Manual, Mental Health/Substance Abuse*, section articulates Medicaid policy for Michigan. Its states with regard to community living supports:

17.3.B. COMMUNITY LIVING SUPPORTS

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

- Assisting, reminding, observing, guiding and/or training in the following activities:
 - meal preparation
 - laundry
 - routine, seasonal, and heavy household care and maintenance
 - activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
 - shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance is needed, the beneficiary, with the help of the PIHP case manager or supports coordinator **must** request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (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. The PIHP case manager or supports coordinator must assist, if necessary, the beneficiary in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization amount, scope and duration of Home Help does not accurately reflect the beneficiary's needs based on findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:
 - money management
 - non-medical care (not requiring nurse or physician intervention)
 - socialization and relationship building
 - transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)

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- participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
 - attendance at medical appointments
 - acquiring or procuring goods, other than those listed under shopping, and nonmedical services
- Reminding, observing and/or monitoring of medication administration
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state plan Personal Care services. Transportation to medical appointments is covered by Medicaid through DHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the beneficiary receiving community living supports.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2014, pp 113-114.

The Medicaid Provider Manual explicitly states that recipients of B3 supports and services, the category of services for which Appellant is eligible, is not intended to meet every minute of need, in particular when parents of children without disabilities would be expected to be providing care:

Decisions regarding the authorization of a B3 service (including the amount, scope and duration) must take into account the PIHP's documented capacity to reasonably and equitably serve other Medicaid beneficiaries who also have needs for these services. The B3 supports and services are not intended to meet all the individual's needs and preferences, as some needs may be better met by community and other natural supports. Natural supports mean unpaid assistance provided to the beneficiary by people in his/her network (family, friends, neighbors, community volunteers) who are willing and able to provide such assistance. It is reasonable to expect that parents of

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minor children with disabilities will provide the same level of care they would provide to their children without disabilities. MDCH encourages the use of natural supports to assist in meeting an individual's needs to the extent that the family or friends who provide the natural supports are willing and able to provide this assistance. PIHPs may not require a beneficiary's natural support network to provide such assistance as a condition for receiving specialty mental health supports and services. The use of natural supports must be documented in the beneficiary's individual plan of service.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2014, Page 111

The CMH is mandated by federal regulation to perform an assessment for the Appellant to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services that are needed to reasonably achieve Appellant's goals.

Evidence on the record indicates that an [REDACTED], letter from Respondent to Appellant indicates that the Medicaid Appeal has been processed and completed. Respondent denied the fifty units (12.5 hours) of CLS requested by Appellant, but increased the CLS hours from 20 units per week (5 hours) to 34 (8.5 hours) units per week. Respondent's Exhibit A page 16

The CMH's representative testified that the purpose of CLS is skill building and that CLS is not intended to meet all the needs of the beneficiary. Evidence on the record shows that the authorization for 34 units of CLS per week reflects an increase in Appellant's CLS and meets Appellant's medical necessity for the services. Appellant receives services for 60 minutes per week shopping; 30 minutes per week for grocery list preparation and menu planning; and 60 minutes per day meal preparation. Respondent's Exhibit A page 15

CMH contends that 34 hours of CLS per week is sufficient for Appellant to reach her objectives. In short, additional hours of CLS would be ineffective as an intervention. CMH has the authority under Section 2.5 of the Medicaid Provider Manual to deny a requested service on the grounds that it would not be clinically effective.

Additional hours of CLS would not meet medical necessity criteria set forth in Section 2.5A of the Medicaid Provider Manual. Lastly, summer camp is no longer offered as CMH benefit.

Appellant testified on the record that her circumstances recently changed. Her father died so she no longer lives with him Appellant's brother works a seasonal job at a ski

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resort and will not be living with her come [REDACTED]. She and her son will live alone at that time.

Based on the evidence presented, one hour equal 4 units (15 minutes each). Four units x seven days = 28 units per week for meal preparation. Appellant was give 4 units per week for shopping and 2 units per week for grocery list/meal planning which equals 34 units per week of CLS services. Appellant has failed to meet her burden of proof to show, by a preponderance of evidence, that the currently offered amount of CLS is insufficient to meet her needs. As indicated above, originally, Appellant was given 20 units of CLS per week. She appealed. The agency reconsidered and determined that Appellant should be given enhanced hours or 34 units per week. Appellant is currently being offered 34 CLS hours per week. While it is understandable that Appellant has concerns with the hours offered by CMH, the fact remains that if there are no issues with CLS staff, Appellant will be receiving the 34 hours of CLS per week. Based on Appellant's current IPOS, 34 hours of CLS hours per week is sufficient in amount, scope and duration to meet Appellant's medically necessary needs.

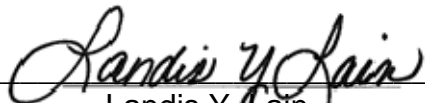
CMH has established by the necessary, competent and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Appellant should receive 34 units per week in Community Living Service hours based upon the circumstances in existence at the time of the request for hearing. Appellant can request additional services relevant to her change in circumstances.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly determined that Appellant was eligible for 34 CLS hours per week.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



Landis Y. Lain

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

cc:

[REDACTED]

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LYL/██████

Date Signed: November 2, 2015

Date Mailed: November 2, 2015

***** 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.