

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

P. O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-017594 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 ██████████ ██████████ Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. ██████████ ██████████ Appellant's father, also testified as witness for Appellant. ██████████ Fair Hearing Officer, represented the Respondent ██████████ County Community Mental Health (CMH). ██████████ Director of Programs and Services; ██████████ Case Management Supervisor; ██████████ Access Supervisor; and ██████████ Case Manager, also testified as witnesses for the CMH.

ISSUE

Did Respondent 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 diagnosed with Pica; Angelman's Syndrome; scoliosis with Harrington rod placement and spinal fusion; allergies; swallowing problems; and a balance disorder. (Respondent's Exhibit 2, pages 2, 10).
2. Due to her diagnoses, Appellant functions in the severe range of mental impairment; is non-verbal; and depends on others for significant assistance in daily personal care, community living supports, and supervision. (Respondent's Exhibit 2, pages 2, 15).

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3. Through the Home Help Services (HHS) program administered by the Department of Health and Human Services (DHHS), Appellant receives ██████ hours per month of HHS. (Respondent's Exhibit 18, page 1).
4. ██████ of those hours were being used in Appellant's family home while she visited them during the week. (Respondent's Exhibit 18, page 1).
5. The remainder of the HHS were used in the home she lives in, which was being run by ██████████ (Respondent's Exhibit 2, page 3).
6. Appellant has also been receiving services through the CMH and the Habilitation Supports Waiver Program (HSW) since ██████ (Respondent's Exhibit 2, page 6).
7. On ██████████ Appellant's Case Manager conducted an assessment regarding Appellant's needs and services. (Respondent's Exhibit 2, pages 1-17).
8. At that time, Appellant was receiving the following services through the CMH and the HSW: supports coordination, CLS, fiscal intermediary services, and mileage reimbursement. (Respondent's Exhibit 2, page 2).
9. Specifically, Appellant was approved for ██████ hours of CLS per day. (Respondent's Exhibit 6, page 2; Respondent's Exhibit 13, page 9).
10. During that assessment, the Case Manager noted that Appellant "lives in a home with ██████ supervision and support with CLS staffed through ██████████ (Respondent's Exhibit 2, page 15).
11. She also noted that Appellant requires ██████ hour supervision and that staff is in place ██████ hours per day. (Respondent's Exhibit 2, pages 3, 6).
12. The Case Manager further recommended that Appellant continue to receive the same amount of services. (Respondent's Exhibit 2, page 2).
13. While Appellant was only approved for ██████ hours of CLS per day, she was able to receive ██████ hour support by combining her CLS with the services received by her ██████ roommates and making some of their combined hours ██████ or ██████. (Respondent's Exhibit 2, page 7; Testimony of Appellant's guardian).
14. Appellant's guardian subsequently telephoned the CMH to appeal the service decision made in Appellant's plan. (Respondent's Exhibit 3, page 2).

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15. On ██████████, the CMH faxed Appellant's guardian forms for filing a local appeal and/or a request for an administrative hearing. (Respondent's Exhibit 3, page 1-5).
16. That same day, Appellant's guardian faxed back a completed request for a local appeal. (Respondent's Exhibit 4, pages 1-5).
17. In that request, she argued that the number of CLS hours allowed by the CMH would be an insufficient number of combined hours for Appellant and her roommate after the ██████████ roommate moves out and that Appellant and her roommate need ██████ staff from ██████ am. to ██████ p.m. daily until a new, ██████ roommate is located. (Respondent's Exhibit 4, page 2).
18. The local appeal was reviewed by a Psychiatric Nurse Practitioner on ██████████ and, during the review, the CMH identified Appellant's clarified request as ██████ for ██████ hours of ██████ CLS and ██████ hours of ██████ CLS per day until a ██████ roommate can be located. (Respondent's Exhibit 6, page 1).
19. That same day, the CMH sent Appellant's guardian written notice that the CMH could not authorize the request, but would amend the PCP to allow up to ██████ hours per day of CLS for ██████ days while a new assessment is completed. (Respondent's Exhibit 6, pages 1-9).
20. On ██████████ and ██████████ Appellant plan was amended to authorize an increase in CLS to ██████ hours per day for ██████ days. (Respondent's Exhibit 11, pages 1-16; Respondent's Exhibit 12, pages 1-4; Respondent's Exhibit 13, pages 1-17).
21. On ██████████, the CMH's Director of Programs and Services met with Appellant's guardian and the guardian of Appellant's roommate. (Respondent's Exhibit 14, pages 1-2).
22. At that time, both guardians requested a return to a self-determination arrangement. (Respondent's Exhibit 14, page 1).
23. On ██████████ Appellant's Case manager met with Appellant's guardian and Appellant's plan was amended to change the CLS back to a Self-Determination arrangement, with ██████████ no longer providing CLS services. (Respondent's Exhibit 15, pages 1-2; Respondent's Exhibit 16, pages 1-21).
24. On ██████████ the CMH's Access Supervisor issued a letter with her recommendations. (Respondent's Exhibit 18, pages 1-2).

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25. That letter concluded:

Throughout the day, due to her diagnosis of PICA, [Appellant] should be monitored for safety purposes, although this is not covered under the Habilitation Supports Waiver CLS section in the Michigan Medicaid manual for an unlicensed setting.

At this time, it is recommended that [Appellant] continue to receive her current Home Help hours as designated by DHS and that CLS services be supplement to these Home Help hours, at a rate of █ hours per day (█ units) per █ hours she is in the home. Prorated for days she is with family.

Respondent's Exhibit 18, page 2

26. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing in this matter regarding the CMH's decision. (Appellant's Exhibit 1, pages 1-6).
27. On ██████████ Appellant's case manager met with Appellant's guardian to amend the PCP to reflect the new CLS hours approved based on the ██████████ recommendation. (Respondent's Exhibit 19, pages 1-2).
28. During that meeting, Appellant's guardian indicated that she had already requested an administrative hearing. (Respondent's Exhibit 19, page 2).
29. The amended PCP continued to report that Appellant required █-hour support to maintain her current living arrangement and that CLS staff will continue to ensure her safety and monitor her, both in the home and in the community. (Respondent's Exhibit 20, pages 2, 4, 6, 10).
30. The amended PCP also provided that Appellant's CLS will be prorated to account for when Appellant she is with natural supports. (Respondent's Exhibit 20, pages 4, 6, 8, 10).
31. On ██████████, the CMH sent Appellant's guardian written notice that the request for additional CLS was denied in part. (Respondent's Exhibit 1, pages 1-5).
32. Specifically, the notice stated that, while Appellant's guardian requested that CLS hours be provided for the entire █-hour day minus any hours of

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HHS, which the CMH identified as [REDACTED] hours of CLS, per day, only [REDACTED] hours per day of CLS was approved. (Respondent's Exhibit 1, page 1).

33. With respect to the denial of any additional hours, the notice also provided that the requested services were not medically necessary given the documentation submitted and that the CLS hours would be nighttime hours only used in case of emergency. (Respondent's 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 her services through the HSW. With respect to the HSW, the Medicaid Provider Manual (MPM) generally provides:

SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to retain eligibility. **Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used.** The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.

*MPM, October 1, 2015 version
Mental Health/Substance Abuse Chapter, page 96
(Emphasis added)*

Regarding medical necessity, the MPM also provides:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

**2.5.C. SUPPORTS, SERVICES AND TREATMENT
AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services:
 - that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
 - that are experimental or investigational in nature; or
 - for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise

satisfies the standards for medically-necessary services; and/or

- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

*MPM, October 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 13-14*

Moreover, with respect to the specific service of CLS through the HSW, the 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);

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- 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

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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

Here, it is undisputed that Appellant requires some CLS and it is only the amount of hours to be authorized that is at issue with the CMH authorizing ■ hours per day of

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such services on a █████ basis and Appellant's guardian requesting sufficient CLS to combine with her roommate's services and provide care █████ hours per day, whether on a █████ basis or a █████ basis, for Appellant until another roommate can be located.

In support of that decision, the CMH's witnesses testified that the █████ hours per day of CLS are sufficient to meet the authorized goals in Appellant's plan and that, while Appellant may need to be monitored due to her impairments and is seeking additional hours in order to ensure that such supervision exists █████ hours a day, general supervision or monitoring is not covered by the HSW. They also testified that they were aware of Appellant's arrangement with her roommate(s) and that Appellant can use her hours any way she wishes, including having the worker work on a █████ or █████ basis, but that Appellant's hours are authorized on an individual basis.

In response, Appellant's guardian testified that Appellant's own need for care and supervision █████ hours a day, █████ days a week, has not changed, but the number of hours of CLS she needs does fluctuate based on the number of residents in her home. She also testified that she requested the additional CLS hours in this case after it was determined that one of Appellant's two roommates would be moving out and there would less total CLS hours among the three roommates to allocate on a █████, █████ or █████ basis. Appellant's guardian further testified that roommates always used staff together, which the CMH knew about, and the arrangement only worked previously because they had all █████ roommates' hours to use and the roommates were so close. Appellant's guardian also disputed the new requirement to have Appellant's hours prorated on days she is with the family, as they were able to use the CLS hours flexibly and in tandem with Appellant's natural supports in the past. She further disputed any reinterpretation of policy that prohibited the supervision Appellant's needs.

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

Given the record and evidence in this case, the undersigned Administrative Law Judge finds that Appellant has met that burden of proof and that the CMH's decision must therefore be reversed. The CMH's witnesses acknowledged that they were aware of Appellant's past arrangement with her roommates and Appellant's plan expressly provided both that Appellant requires supervision █████ hours per day and that Appellant lives in a home with CLS staff in place █████ hours a day, which was only possible with Appellant and her roommates using some of their services on a █████ or █████ at times. However, when one of Appellant's roommates moved out and the possibility of using CLS on a █████ basis was removed, Appellant's guardian requested additional hours to meet Appellant's needs and the CMH only increased Appellant's CLS to █████ hours per day and denied any additional hours. In doing so, the CMH argues that the █████ hours per day of CLS is sufficient to meet the authorized goals in Appellant's plan and that any general supervision or monitoring sought by Appellant is not covered by the HSW. However, the CMH's argument is unpersuasive as, per policy, it is medical necessity criteria that should be used in determining the amount, duration, and scope of services

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and supports through the HSW and Appellant's plan and goals have always provided that Appellant requires ■-hour support to maintain her current living arrangement and that CLS staff will continue to ensure her safety and monitor her, both in the home and in the community. Moreover, the CMH's decision and the amended person-centered plan also appeared to fail to fully address Appellant's particular circumstances, where, as everyone knew, Appellant's services were being used in conjunction with the services of her roommate(s) and yet the plan never specifically addressed that arrangement, beyond noting that Appellant is only able to maintained in the home with staff is in place ■ hours per day.

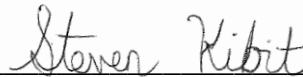
It is not clear how much, if any, additional CLS would be necessary given Appellant's current services,, both through the CMH and through DHHS; her natural supports; and her living arrangement; but the undersigned Administrative Law Judge finds that the CMH erred in denying Appellant's request for additional hours in this case and that it must therefore reassess Appellant's request and services.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Respondent's decision is **REVERSED** and it must initiate a reassessment of Appellant's request.



Steven J. Kibit

Administrative Law Judge

for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Mailed: ■■■■■■■■■■

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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.