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

[redacted],

Appellant

Docket No. 15-019945 CMH
Case No. [redacted]

_____/

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 hearing was held on [redacted]. Appellant did not appear at the hearing. Appellant was represented at the hearing by Appellant's mother, [redacted], and [redacted], supports Coordinator, who appeared and testified on Appellant's behalf.

[redacted] (P[redacted]), Assistant Corporation Counsel, represented [redacted] (CMH or Department or Respondent). [redacted], Clinical Supervisor, [redacted], appeared as witnesses for the Department.

ISSUE

Did the CMH properly determine that Appellant's Community Living Supports (CLS) hours should be 40 units (10 hours) per week?

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's date of birth is [redacted].

3. Appellant has been diagnosed with moderate cognitive impairment, cerebral palsy, visual impairment, Attention "Deficit Hyperactive Disorder, mood disorder NOS, disruptive behavior disorder NOS, and expressive and mixed receptive expressive language disorder, as well as a visual impairment.

4. 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.

5. Appellant resides at home with his family and attends [redacted] for two hours per day five days per week.

6. Appellant has access to preferred activities at home and spends time in the community with his family.

7. On [redacted] an Adequate Action Notice was sent to Appellant's Guardian, stating "Appellant requested 84 units (22 hours) of CLS per week. Appellant was approved for 40 units (10 hours) of CLS per week." (Respondent's Exhibit A page 7)

8. On [redacted], Appellant's mother filed a Request for a Hearing contesting the cuts in CLS hours stating that Appellant is only in school two hours per day and he needs his staff and hours to help him and assist with Activities of Daily Living (ADL's) and other activities and learning skills. (Respondent's Exhibit A page 10)

9. On [redacted], the CMH sent Appellant's mother notice that Appellant was approved for 10 hours of CLS (40 units) per week; plus 10 hours (40 units) per week of respite care. (Respondent's Exhibit A page 8)

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.
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> *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**
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> 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)
- 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 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.
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> *Medicaid Provider Manual*
> *Mental Health and Substance Abuse Section*
> *January 1, 2014, Page 111*

17.3.I. RESPITE CARE SERVICES

> Respite care services are intended to assist in maintaining a goal of living in a natural community home and are provided on a short-term, intermittent basis to relieve the beneficiary's family or other primary caregiver(s) from daily stress and care demands during times when they are providing unpaid care. Respite is not intended to be provided on a continuous, long-term basis where it is a part of daily services that would enable an unpaid caregiver to work elsewhere full time. In those cases, community living supports, or other services of paid support or training staff, should be used. Decisions about the methods and amounts of respite should be decided during person centered planning. PIHPs may not require active clinical treatment as a prerequisite for receiving respite care. These services do not supplant or substitute for community living support or other services of paid support/training staff.
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> *Medicaid Provider Manual*
> *Mental Health and Substance Abuse Section 17.3.I*
> *Respite Care, Page 133*

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 his goals.

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. Appellant's goal is that he will be successful with social interactions at home and in the community. CMH contends that Appellant's current IPOS Addendum goal is that Appellant will be successful at home and in the community. Appellant will:

- Participate in community outings with CLS staff such as: go to the park, go on walks, shopping, movies, car shows, and Gibraltar at least 1x week with stave with three verbal prompts producing 100% success rate;
- Receive training from CLS staff, with maintaining good hygiene/grooming tasks included but not limited to brushing/combing his hair and brushing/flossing his teeth with constant reminders and prompts to produce 100% success rate;
- Receive training from CLS staff on learning to pick up after himself in a timely manner, such as putting his books/toys in appropriate places, picking up his clothes, taking his dishes to the sink, etc. daily, with 6 verbal prompts and redirecting at a 100% success rate;
- Receive training from CLS staff on dressing with 10 verbal prompts and physical assistance with a 20% success rate;
- Receive training from CLS staff on concepts of time, such as getting ready for school or going to bed, daily, with 2 verbal prompts and physical assistance at a 100% success rate;
- Receive training from CLS staff on learning emergency skills including but not limited to identifying when there is an emergency and exiting the house, 1x per week, with 5 verbal reminders at a 20% success rate;
- Receive training from CLS staff on learning health and safety in the community with constant supervision with a 100% success rate;
- Receive training from CLS staff on making decisions on his own, daily, for recreational activities and fun with 5 verbal prompts and reminders at at 100% success rate.

CMH contends that 10 hours of CLS per week is sufficient for Appellant to reach his objectives. Appellant attends school during the regular school year. Several of his goals, such as choosing appropriate clothing, putting away toys, using utensils, washing hands, face, and hair and brushing teeth are a level of care that is appropriate for a parent to provide. The intensity of service authorized is sufficient in amount, scope and duration to reasonably meet the objectives of the person centered plan and address the goals of promoting community inclusion and participation, independence 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. CLS hours 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 parents' choice to home-school. (Attachment F). 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.

CMH further contends that additional hours of CLS cannot be expected to treat, ameliorate, diminish or stabilize the symptoms of Appellant's developmental disability, or assist the beneficiary to attain or delay progression of his developmental disability, or assist the beneficiary to attain or maintain a sufficient level of functioning to meet his objective. In short, any additional hours of CLS would not meet medical necessity criteria set forth in Section 2.5A of the Medicaid Provider Manual.

Lastly, CMH contends that respite care services are intended to assist in maintaining a goal of living in a natural community home and are provided on a short-term, intermittent basis to relieve the beneficiary's family or other primary caregiver(s) from daily stress and care demands, during the times they are providing care. Appellant receives 10 hours per week in respite care. CLS and RCS were authorized in an amount that is sufficient in scope and duration to reasonably achieve Appellant's goals.

Appellant's representative contends that Appellant is still working on daily living skills. Appellant has substantial behavioral problems and can only attend school two hours per day. As a result, communication is very difficult for him and he is most easily understood by those he interacts with regularly who can interpret his request or gestures. Because Appellant needs this opportunity to take advantage of the community living supports and respite care services so that he can achieve the best opportunity to improve his communication and daily living skills possible. The proposed reduction in CLS is arbitrary and capricious.

Appellant's representative further contends that CLS is medically necessary as it is being authorized. Most boys would not reasonably require the type of supervision that Appellant does. Cutting CLS will put a great deal of stress on all of the parties involved, including Appellant and there is no more medically appropriate evaluation that has been provided or done which would support any reduction at all of CLS.

Appellant's representative has failed to meet the burden of proof to show, by a preponderance of evidence, that the currently offered amount of CLS is insufficient to meet his needs. As indicated above, Appellant is currently being offered 10 CLS hours per week. While it is understandable that Appellant's family 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 10 hours of CLS per week that his family desires for Appellant. CMH indicates that Appellant has made sufficient progress that his needs can be met with the approved hours. Based on Appellant's current Individual Plan Of Service (IPOS), 10 hours of CLS hours and 10 hours of RCS 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 10 hours per week in Community Living Service hours and 10 hours per week of shared respite care hours based upon his current circumstances.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly authorized CLS and RSC in an amount that is sufficient in scope and duration to reasonably allow Appellant to achieve his IPOS goals under the circumstances.

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]

LYL[redacted]

Date Signed: January 14, 2016

Date Mailed: January 14, 2016

***** 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.