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. 15-013018 CMH

[redacted]

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 hearing filed on the minor Appellant's behalf.

After due notice, an in-person hearing was begun on [redacted] Appellant's mother, appeared and testified Appellant's behalf. [redacted] Fair Hearings Officer, appeared on behalf of the Respondent [redacted], former Deputy Director at [redacted], and [redacted], Program Administrator at Community Support and Treatment Services (CSTS), testified as witnesses for Respondent.

ISSUE

Did [redacted] properly reduce Appellant's individual budget and all-inclusive rate for 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. [redacted] is a Community Mental Health Services Program (CMHSP) that is affiliated with a Prepaid Inpatient Health Plan (PIHP), the [redacted] of [redacted], and that administers the Children's Home and Community Based Services Waiver Program (CWP) for its service area.

2. Appellant is a [redacted] year-old Medicaid beneficiary who has been receiving services with [redacted] and CSTS, WCHO's contracted provider, through the CWP. (Exhibit C, page 1).

[1] Since this case began, [redacted] was replaced by the [redacted].

3. Specifically, Appellant has been receiving services through a Choice Voucher System designed to facilitate and support self-determination and, in which, Appellant's representative has authority over employees and the individual budget. (Exhibit I, page 1-3).

4. That self-determination arrangement is documented in a Voucher Agreement for Children's Waiver Services signed on [redacted] by Appellant's mother, Appellant's supports coordinator at CSTS, and the CSTS Program Administrator. (Exhibit I, pages 1-3).

5. In that agreement, CSTS agreed to, among other things, coordinate the development and implementation of an Individual Plan of Service (IPOS); provide Appellant's family with information regarding current allowable rates for services to be provided through the Voucher; and to regularly update Appellant's plan and service budget to reflect any changes or needed services. (Exhibit I, page 1).

6. Appellant's mother also agreed, among other things, to participate in the development, review and implementation of the IPOS and services; that staff will only perform those services agreed upon in the IPOS and budget; to hire, to supervise and pay employees for the services identified in the IPOS; and, as the employer, "to establish wages and benefits within the current rates established by [redacted] for the services to be provided." (Exhibit I, page 2).

7. Appellant's most recent IPOS was signed by CSTS staff on [redacted] and Appellant's mother on [redacted] (Exhibit C, page 5).

8. The IPOS to be effective for [redacted] through [redacted] (Exhibit C, page 1)

9. Services included in the IPOS for [redacted] through [redacted] included CLS, respite care services, music therapy, massage therapy, physical therapy, occupational therapy, speech therapy, and targeted case management. (Exhibit C, pages 3-4).

10. The CLS services were to continue through the self-determination arrangement and an individual budget of [redacted] was set for the year. (Exhibit K, page 1).

11. In part, that individual budget was based on thirty-two hours per week of CLS at an all-inclusive rate of [redacted] per hour. (Exhibit K, page 1).

12. In [redacted] conducted a review of its programs and determined that the all-inclusive rate for self-determination CLS it was

approving, including in Appellant's case, was higher than the rate used by the other t[redacted] CMHSPs affiliated with its PIHP. (Testimony of [redacted]

13. On [redacted] sent a letter to self-determination participants, including Appellant, that provided that the all-inclusive rate for self-determination CLS was being changed to [redacted] per hour. (Testimony of [redacted].

14. With that change, the number of hours of CLS would remain the same, but her individual budget would be reduced. (Testimony of [redacted]

15. Appellant's IPOS was not updated at that time. (Testimony of [redacted]

16. Subsequently, the Department of Health and Human Services (DHHS or Department) advised[redacted] that [redacted] had failed to comply with the CWP application by not using the person-centered planning process when changing the budget. (Testimony of [redacted]).

17. On [redacted], staff from CSTS and [redacted] met and decided to offer the reduced all-inclusive rate for CLS to self-determination participants. (Testimony of [redacted]

18. Appellant's IPOS was then amended to reflect the change in the all-inclusive rate for self-determination CLS that occurred on [redacted] and it was noted that the change was effective for the duration of the IPOS. (Exhibit C, page 4).

19. That same day, [redacted] sent Appellant a written notice of the amendment to the IPOS. (Exhibit B, pages 1-2).

20. The notice also advised Appellant of her right to request an administrative hearing if she disagreed with the action. (Exhibit B, pages 1-2).

21. On [redacted], Appellant's representative declined to sign the amended IPOS. (Exhibit C, page 6).

22. On [redacted], CSTS staff spoke with Appellant's mother and offered an all-inclusive rate for self-determination CLS of[redacted] per hour, which it identified as the maximum rate for non-holiday CLS identified on the Medicaid fee screen. (Exhibit D, pages 1-2; Testimony of [redacted]).

23. Appellant's mother declined that rate. (Testimony of Appellant's representative; Testimony of [redacted]

24. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Exhibit 1, pages 1-3).

25. With due notice, an in-person hearing was then scheduled for [redacted].

26. Appellant's also requested a Local Hearing with [redacted] and, on [redacted], the Local Dispute Resolution meeting was held. (Exhibit L, pages 1-2).

27. [redacted] subsequently upheld the decision to continue the all-inclusive CLS rate at [redacted] per hour. (Exhibit L, page 2).

28. It also indicated that, given the pending administrative hearing, Appellant's individual budget should remain at the pre-[redacted] budget until a decision was reached by an Administrative Law Judge. (Exhibit L, page 2).

29. On [redacted] the administrative hearing scheduled for [redacted] in this matter was adjourned at Respondent's request and rescheduled for [redacted]

30. On [redacted] the administrative hearing in this matter was adjourned at Appellant's request and rescheduled for [redacted]

31. On [redacted] the in-person hearing was held as scheduled.

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 receives services through the Children's Home and Community Based Services Waiver Program (CWP). With respect to that program, the Medicaid Provider Manual (MPM) states:

> **SECTION 14 – CHILDREN'S HOME AND COMMUNITY-BASED SERVICES WAIVER (CWP)**
>
> The Children's Home and Community Based Services Waiver Program (CWP) provides services that are

enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

The Children's Waiver is a fee-for-service program administered by the CMHSP. The CMHSP will be held financially responsible for any costs incurred on behalf of the CWP beneficiary that were authorized by the CMHSP and exceed the Medicaid fee screens or amount, duration and scope parameters.

Services, equipment and Environmental Accessibility Adaptations (EAAs) that require prior authorization from MDHHS must be submitted to the CWP Clinical Review Team at MDHHS. The team is comprised of a physician, registered nurse, psychologist, and licensed master's social worker with consultation by a building specialist and an occupational therapist.

14.1 KEY PROVISIONS

The CWP enables Medicaid to fund necessary home- and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income. The CMHSP is responsible for assessment of potential waiver candidates. The CMHSP is also responsible for referring potential waiver candidates by completing the CWP "pre-screen" form and sending it to the MDHHS to determine priority rating.

Application for the CWP is made through the CMHSP. The CMHSP is responsible for the coordination of the child's waiver services. The case manager, the child and his family, friends, and other professional members of the planning team work cooperatively to identify the child's needs and to secure the necessary services. All services and supports must be included in the Individual Plan of Services (IPOS). The IPOS must be reviewed, approved and signed by the physician.

A CWP beneficiary must receive at least one children's waiver service per month in order to retain eligibility.

* * *

14.3 COVERED WAIVER SERVICES

Covered Medicaid services that continue to be available to CWP beneficiaries are listed in the Covered Services Section of this chapter. Refer to the Children's Waiver Community Living Support Services Appendix of this chapter for criteria for determining number of hours. Services covered under CWP include:

Community Living Supports	Community Living Supports (CLS) provides assistance to a 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; 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. The supports, as identified in the individual plan of services, are provided in the child's home and may be provided in community settings when integration into the community is an identified goal. These supports may serve to reinforce skills or lessons taught in school, therapy or other settings, but are not intended to

	supplant services provided in school or other settings. Individuals who are identified in the individual plan of services to provide CLS to the child and family must meet provider qualifications. The CMHSP must maintain the following documentation: ▪ A log of the CLS must be maintained in the child's record, documenting the provision of activities outlined in the plan. ▪ Provider qualifications and standards must be maintained for all staff providing services and supports to the child and family. All service costs must be maintained in the child's file for audit purposes.

* * *

14.5 PROVIDER QUALIFICATIONS

14.5.A. INDIVIDUALS WHO PROVIDE RESPITE AND CLS

Individuals who provide respite and CLS must:

- Be at least 18 years of age.
- Be able to practice prevention techniques to reduce transmission of any communicable

> diseases from themselves to others in the environment where they are providing support.
>
> - Have a documented understanding and skill in implementing the individual plan of services and report on activities performed.
> - Be in good standing with the law (i.e., not a fugitive from justice, a convicted felon, or an illegal alien).
> - Be able to perform basic first aid and emergency procedures.
> - Be trained in recipient rights.
> - Be an employee of the CMHSP or its contract agency, or an employee of the parent who is paid through a Choice Voucher arrangement. The Choice Voucher System is the designation or set of arrangements that facilitate and support accomplishing self-determination through the use of an individual budget, a fiscal intermediary and direct consumer-provider contracting.
>
> *MPM, October 1, 2015 version*
> *Mental Health/Substance Abuse Chapter, pages 85-95*

Within the CWP, Appellant receives her CLS through the Choice Voucher System referenced in the above policy. Regarding that system of self-determination, the approved policies in the CWP application provide as an overview that:

> Michigan has a long history of supporting opportunities for participant self-direction that goes back to the early 1990's. These opportunities were reinforced when, in 1996, the Michigan legislature made person-centered planning a requirement for all consumers receiving services and supports under the Mental Health Code. Since 1997 when Michigan was awarded its Robert Wood Johnson Self-Determination demonstration grant, the Michigan Department of Community Health (MDCH) has continued to build the demand and capacity for arrangements that support self-determination. Elements of participant direction are embedded in both policy and practice from Michigan's

Mental Health Code, the MDCH Person-Centered Policy Practice Guideline and Self-Determination Policy and Practice Guideline, the requirements in the contracts between the state and the CMHSPs, and technical assistance at the state level for multiple methods for implementation by CMHSPs.

While the principles of self-determination apply only to adults, the methods for implementing such arrangements were incorporated into the Children's Waiver Program (CWP), in 2002. That year, the first version of the Choice Voucher System Technical Advisory for the Children's Waiver Program was released.

(a) The nature of the opportunities afforded to consumers

Through their representative, CWP consumers may elect employer authority or budget authority and can direct a single service or all of their services for which consumer direction is an option. Resources to support the chosen consumer-directed services are transferred to a fiscal intermediary (this is the Michigan term for the entity that provides Financial Management Services-FMS), which administers the funds and makes payment upon authorization of the consumer's representative.

Consumers can directly employ staff or contract with clinical providers through Choice Voucher arrangements. The responsible parent of the CWP consumer is the common law employer of the providers of hourly care staff and directs clincial [sic] providers through purchase of service agreements. The responsible parent delegates performance of the fiscal/employer agent functions to the fiscal intermediary, which processes payroll and performs other administrative and support functions. The responsible parent of the CWP consumer directly recruits, hires and manages service providers. Detailed guidance to CMHSP entities on the Choice Voucher System is provided in the Choice Voucher System Technical Advisory.

(b) How consumers may take advantage of these opportunities

The Customer Services Handbook, which includes information about self-directed services, is disseminated to

all consumers of mental health services and is provided at the onset of services. Information on these arrangements is also provided by the case manager (or other QMRP selected by the family)to all CWP-enrolled consumers and their families – at initial enrollment and on an on-going basis. As used throughout the application, "other QMRP selected by the family" refers to the fact a consumer can not be required to have a casemanager. The other QMPR would be a CMHSP employee assigned to complete the functions identified under the Targeted Case Management (TCM) service in the MA Provider Manual. The information is provided in the context of discussing options regarding waiver services and qualified providers. Parents of CWP consumers interested in pursuing arrangements that support self-direction begin the process by letting their case manager (or other QMRP) know of their wishes. Consumers/families are given information regarding the responsibilities, liabilities and benefits of consumer-direction prior to the person-centered planning process. An individual plan of service (IPOS) is developed through this process with the consumer and his/her family, case manager, and allies chosen by the consumer and his/her family. The plan includes services and supports needed by and appropriate for the consumer, and identifies the waiver services the consumer/family wishes to self-direct. An individual budget is developed based on all the services and supports identified in the IPOS, and must be sufficient to implement the IPOS. The responsible parent of the CWP consumer can choose to use the Choice Voucher System for the identified self-directed services.

(c) The entities that support individuals who direct their services and the supports that they provide

Through its contract with MDCH, each CMHSP is required to offer information and education to consumers on consumer direction. Each CMHSP also offers support to consumers and their families in these arrangements. This support can include offering required training for workers, offering peer-to-peer discussion forums on how to be a better employer, or providing one-on-one assistance when a problem arises.

While there are a number of options for consumers to obtain assistance and support in implementing their arrangements (e.g., independent advocacy, involvement of a network of

> consumer allies - described in Section E-1- k, below) CMHSPs are the primary entity that supports consumers who direct their own services. Case managers, or another QMRP selected by the family, are responsible for providing support to consumers in these arrangements by working with them through the person-centered planning process to develop an IPOS and an individual budget, and to assure and implement staffing back-up plans as appropriate to the child's needs. The case manager or other QMRP is responsible for obtaining authorization of the budget and plan and monitoring the plan, budget and service arrangements. Case managers (or other QMRPs) make sure that consumers receive the services as identified in the IPOS and that the arrangements are implemented smoothly.
>
> Each CMHSP is required to contract with fiscal intermediaries to provide financial management services. The fiscal intermediary performs a number of essential tasks to support consumer direction while assuring accountability for the public funds paid to these service providers. The fiscal intermediary has four basic areas of performance:
> • function as the employer agent for consumers directly employing workers to assure compliance with payroll tax and insurance requirements;
> • ensure compliance with requirements related to management of public funds, the direct employment of workers by consumers, and contracting for other authorized services;
> • facilitate successful implementation of the arrangements by monitoring the utilization of services and providing monthly invoices to the CMHSP; and
> • offer supportive services to enable consumers to self-direct the services and supports they need as listed in application E-1 iii-Scope of FMS.
>
> *CWP Application*
> *Appendix E-1: Overview (1 of 13)*
> *(Emphasis added)*

Furthermore, with respect to the participant-directed budget in the self-determination program, the approved policies in the CWP application also provide that

> The IPOS identifies the amount, scope and duration of services for which the consumer can exercise budget authority. The Medicaid fee screens establish the limit for

> each service and the consumer can determine the amount paid for services within the established limit. The amount of service to be provided can be revised as needed up to the maximum established by the program and as approved in the IPOS.
>
> *CWP Application*
> *Appendix E-2: Opportunities for Participant-Direction (3 of 6)*
>
> The budget, which reflects the services identifed [sic] in the IPOS, and includes but is not limited to the self-directed services, is provided to the family annually. The budget is merely a reflection of the services identified in the IPOS. If the IPOS does not adequately address the consumers [sic] needs, they can request a revision in the IPOS and can request a Fair Hearing when a services is denied or reduced.
>
> *CWP Application*
> *Appendix E-2: Opportunities for Participant-Direction (4 of 6)*
> *(Emphasis added)*

Additionally, the CWP application further provides that any modifications to the participant directed budget must be preceded by a change in the service plan, *see* CWP Application, Appendix E-2: Opportunities for Participant-Direction (5 of 6), and the [redacted] must provide an opportunity to request a fair hearing to individuals who are denied the service(s) of their choice or the provider(s) of their choice; or whose services are denied, suspended, reduced or terminated, *see* CWP Application, Appendix F-1: Opportunity to Request a Fair Hearing.

Here, [redacted] initially decided to reduce the all-inclusive rate for CLS for all self-determination participants, including Appellant, to [redacted] per hour from the [redacted] previously approved and, as a consequence of that decision, Appellant's individual budget was reduced. Subsequently, [redacted] offered an all-inclusive rate for CLS of [redacted] per hour, which would still constitute a reduction in the original rate and individual budget.

In support of that decision, [redacted] former Deputy Director testified that, during its initial review, [redacted] discovered that its approved all-inclusive rate was above the rate used by the three other CMHSPs affiliated with its PIHP and that it wanted to bring its rate into alignment with them as a good financial steward of Medicaid dollars. He also testified that, after the Department advised [redacted] that [redacted] had failed to comply with the CWP application by not using the person-centered planning process when changing

the budget, it amended Appellant's IPOS and advised Appellant of her right to request a hearing. He further testified the amount, scope and duration of Appellant's services never changed and that the decision to reduce the rate was made pursuant to the CMHSP's authority to set as a local matter the maximum amount that a participant may spend to pay providers of specific services and supports.

In response, Appellant's mother testified that it is never easy to find or retain staff for Appellant, and that it will be impossible to do so with the reduced individual budget. She also testified that the cost of living is lower in other counties, which might be why their rate is lower, and that Appellant needs at least the rate and budget that were agreed to.

Appellant bears the burden of proving be a preponderance of the evidence that [redacted] erred in reducing Appellant's individual budget and all-inclusive rate for CLS in this case.

Given the above evidence and policies, the undersigned Administrative Law Judge finds that Appellant has met that burden of proof and that [redacted] decision must be reversed. The IPOS and individual budget in this case were developed through the person-centered planning process and agreed upon for the time period of [redacted] through [redacted]. However, prior to the expiration of the IPOS, Respondent decided to unilaterally reduced Appellant's agreed upon CLS rate and individual budget; first without even amending the plan, despite the policy that any modifications to the participant directed budget must be preceded by a change in the service plan, and then by simply amending the plan on its own, despite the signed agreement between the parties, the duration of the IPOS, and the policy that an individual budget, which reflects the services identified in the IPOS, is to be provided to the family annually. Respondent's witness testified regarding the CMHSP's authority to set, as a local matter, the maximum amount that a participant may spend to pay providers of specific services and supports, but there was no testimony or support for the position that [redacted] could change the previously-agreed upon rate and budget in the middle of the IPOS.

The Department previously advised [redacted] that it failed to comply with the CWP application by not using the person-centered planning process when changing the budget and [redacted]'s current, unilateral action regarding Appellant's IPOS is essentially no different and it improperly reduced Appellant's individual budget during the duration of the IPOS without any agreement by Appellant and in violation of the CWP application. Accordingly, [redacted] erred and its decision must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that [redacted] improperly reduced Appellant's individual budget and all-inclusive rate for CLS.

IT IS THEREFORE ORDERED that:

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

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

Date Signed: [redacted]

Date Mailed: [redacted]

SK/db

cc: [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.