



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 16-003009
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. [REDACTED], Petitioner's mother and guardian, appeared on Petitioner's behalf. [REDACTED], Petitioner's brother and respite worker and [REDACTED], Petitioner's Supports Coordinator appeared as witnesses for Petitioner.

[REDACTED], Assistant Corporation Counsel, [REDACTED] County Community Mental Health Authority (CMH), represented the Department. [REDACTED], [REDACTED] Manager, appeared as a witness for the Department.

ISSUE

Did the CMH properly deny Petitioner's request for additional 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. Petitioner is an [REDACTED] year old Medicaid beneficiary, born [REDACTED], receiving services through [REDACTED] County Community Mental Health (CMH). (Exhibit A, p 12; Testimony)
1. CMH is under contract with the Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area.

2. Petitioner is diagnosed with mild cognitive impairment, Asperger's disorder, attention deficit disorder, hematuria, spastic diplegia, hypothyroidism, seizure disorder, and cerebral palsy. (Exhibit A, pp 18-20, 29; Testimony)
3. Petitioner requires assistance with completing his ADL's, including eating, grooming/hygiene, and bathing. Petitioner requires assistance with making healthy food choices, choosing weather appropriate clothing, prompting to complete some self-care tasks, self-direction, money management, medication administration, and planning for the future. (Exhibit A, pp 18-20, 29; Testimony)
4. Petitioner is prescribed the medications Diastat, Levothyroxine, Vimpat, and Clonazepam. (Exhibit A, p 15; Testimony)
5. Petitioner lives with his parents and older brother in a single family home. (Exhibit A, pp 13, 20; Testimony)
6. Petitioner attends [REDACTED] in the cognitive impairment program. (Exhibit A, pp 19-20; Testimony)
7. Petitioner's current services through CMH include supports coordination, 15 hours per week of community living supports (CLS), 12.5 hours per week of respite services, and 8.5 hours per week of adult home help. (Exhibit A, p 31; Testimony)
8. Following Petitioner's Annual Assessment on [REDACTED], Petitioner's Supports Coordinator and mother requested six (6) additional CLS hours per week. (Exhibit A; Testimony)
9. On [REDACTED], CMH sent Petitioner an Adequate Action Notice informing him that the request for six (6) additional CLS hours per week had been denied. (Exhibit A, pp 5-7; Testimony)
10. Petitioner's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit 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 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 Health and Human Services (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services 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 CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

The Medicaid Provider Manual articulates Medicaid policy for Michigan. It states, in relevant part:

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and
- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and
- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and
- Additional criteria indicated in certain B3 service definitions, as applicable.

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.

Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.

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, (that exceeds state plan for adults) prompting, reminding, cueing, (revised 7/1/2011), 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/Substance Abuse Chapter
January 1, 2016, pp 120, 122-123
Emphasis added.*

CMH's [REDACTED] Manager testified that the [REDACTED] makes level of care determinations for beneficiaries, approves on-going care, and connects beneficiaries with providers. CMH's [REDACTED] Manager reviewed Petitioner's age, diagnoses, living situation, school attendance, and the current services Petitioner is receiving through CMH. CMH's Access [REDACTED] indicated that the CLS services Petitioner is receiving are B3 services under the State Plan and are not intended to meet all of Petitioner's needs and preferences. CMH's [REDACTED] Manager also testified that in addition to the services Petitioner receives through CMH, he also receives Adult Home Help services and attends school full time. CMH's [REDACTED] Manager reviewed the function of CLS, which includes increasing or maintaining personal self-sufficiency and facilitating an individual's achievement of goals of community inclusion and participation, independence or productivity. Here, CMH's [REDACTED] Manager indicated that Petitioner's request for additional CLS was denied because it was determined that the authorized services were sufficient in amount, scope and duration to meet Petitioner's needs. CMH's [REDACTED] Manager noted that there was no documented change in Petitioner's condition to support an increase in CLS.

Petitioner's mother testified that while Petitioner is in school full-time, he is out of school over 180 days per year and needs further assistance. Petitioner's mother indicated that she works full-time and attends school part time and that Petitioner has to be dropped off at her office each day after school because they do not have enough care hours to cover that time. Petitioner's mother was not sure how much longer her employer would allow her to do this. Petitioner's mother also indicated that her schedule is not

consistent and she often has to work late or work outside of the usual 8:00 a.m. to 5:00 p.m. hours. Petitioner's mother testified that Petitioner's brother, who helps care for Petitioner, also goes to school full time. Petitioner's mother indicated that Petitioner's condition has remained about the same over the last review period but that he still has seizures and can only be left alone for up to 10 minutes at a time. Petitioner's mother testified that she sometimes has to pay for additional CLS out of pocket because Petitioner needs additional care. Petitioner's mother pointed out that Petitioner is also involved in Special Olympics and requires support for that too. Petitioner's mother indicated that Petitioner's school does not offer any extended time outside of regular school hours for Petitioner to remain at the school.

Petitioner's brother testified that he will be attending college this summer full-time in order to finish up his degree so he will have less time than usual this summer to care for Petitioner.

Petitioner's Supports Coordinator testified that she added some new goals to Petitioner's Plan of Care at the beginning of [REDACTED] and she did not believe those new goals were taken into consideration when the request for extra hours was submitted. Petitioner's Supports Coordinator testified that she can attest to the fact that Petitioner's mother sometimes gets stuck at work outside of normal work hours.

Petitioner bears the burden of proving by a preponderance of the evidence that an additional 6 hours of CLS per week are medically necessary. CMH provided sufficient evidence that it adhered to federal regulations and state policy when authorizing 15 hours per week of CLS for Petitioner, and in denying an additional 6 hours of CLS per week. Petitioner failed to prove by a preponderance of the evidence that an additional 6 hours per week of CLS was medically necessary.

As indicated above, B3 services are not intended to meet all of a consumer's needs and preferences and there was no evidence presented that there had been a change in Petitioner's condition justifying a need for an increase in CLS hours. Petitioner has been receiving 15 CLS hours for at least the past couple of years and his circumstances have not changed during that time. Furthermore, beneficiaries must access State Plan/Adult Home Help services prior to utilizing CMH services and here Petitioner receives 12.5 hours of Adult Home Help per week in addition to his CLS and respite. Finally, the CMH must take into account its ability to serve other beneficiaries and CLS services are not intended to meet all of a beneficiary's needs and desires. Based on the evidence presented, the current amount of CLS authorized is sufficient in amount, scope and duration to reasonably meet Petitioner's needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly denied Petitioner's request for an additional 6 CLS hours per week.

IT IS THEREFORE ORDERED that:

The CMH decision is AFFIRMED.



RM/cg

Robert J. Meade

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Authorized Hearing Rep.

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]

Petitioner

[REDACTED]