



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.: 16-004946
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], Residential Supervisor, appeared and testified on Petitioner's behalf. Petitioner also appeared and testified.

[REDACTED], Manager, Due Process, represented [REDACTED], (CMH or Department). [REDACTED], Supports Coordinator Supervisor, [REDACTED], Unit Director Supports Coordinator; and [REDACTED], Compliance Coordinator, appeared as witnesses for the CMH.

ISSUE

Did the CMH properly calculate Petitioner's 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. Petitioner is a [REDACTED] year old Medicaid beneficiary, born [REDACTED] who has been receiving supports and services through CMH. (Exhibit A, p 3; Testimony).
2. 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. (Exhibit A; Testimony)

3. Petitioner lives in a residence with a roommate, who also receives supports and services through CMH. (Exhibit A, pp 3-22; Testimony).
4. Petitioner's natural supports consist of some contact in the community with family members. Petitioner is not employed. (Exhibit A, pp 3-22; Testimony)
5. Petitioner completes all Activities of Daily Living (ADL's) with occasional prompts and most Instrumental Activities of Daily Living (IADL's) with guidance and direction. Petitioner has some behavioral issues and some health issues, with her last hospitalization in [REDACTED] (Petitioner's CLS was increased temporarily following her hospitalization, and she also now receives additional nursing services due to her health conditions.) Petitioner can be left alone up to 4 hours at a time when awake and she does not require nighttime supports. (Exhibit A, pp 3-22; Testimony)
6. Between Petitioner and her housemate, there are 12 hours per day of CLS available for shared use. (Exhibit A, pp 3-22; Testimony)
7. The goals for which CLS is authorized in Petitioner's current plan of service include: continuing to live in an appropriate home in the community, increasing independence with daily tasks, increased sense of engagement and connection with her community, and exercise. (Exhibit A, pp 3-22; Testimony)
8. Following the completion of Petitioner's most recent Individual Plan of Service (IPOS), effective [REDACTED], CMH determined that 42 hours of CLS per week was sufficient in amount, scope and duration to reasonably achieve the goals stated in Petitioner's IPOS. This was a reduction from the 56 CLS hours per week Petitioner had been receiving previously. (Exhibit A, pp 3-22; Testimony)
9. On [REDACTED], CMH sent Petitioner a copy of her most recent IPOS, which included the reduced CLS hours, and advised Petitioner of her appeal rights. (Exhibit A, p 2; Testimony)
10. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System. (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 (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. BABHA 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 *Medicaid Provider Manual (MPM)*, articulates Medicaid policy for Michigan.

The MPM states with regard to medical necessity:

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.

*Medicaid Provider Manual
Behavioral Health and Intellectual Developmental
Disability Supports and Services Chapter
April 1, 2016, pp 13-15*

The MPM states with regard to community living supports:

17.3.B. COMMUNITY LIVING SUPPORTS

NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years.

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, 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 services otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973 or 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 appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from MDHHS. CLS may be used for those activities while the beneficiary awaits determination by MDHHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the MDHHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the MDHHS 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 non-medical 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 coverage Personal Care in Specialized Residential Settings. Transportation to medical appointments is covered by Medicaid through MDHHS 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.

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living 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 the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a MDHHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help.

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.

*Medicaid Provider Manual,
Behavioral Health and Intellectual Developmental
Disability Supports and Services Chapter
April 1, 2016, pp 122-123*

The Medicaid Provider Manual explicitly states that recipients of B3 supports and services, the category of services for which Petitioner is eligible, is not intended to meet every minute of need for beneficiaries:

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. MDHHS 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. (Emphasis added).

*Medicaid Provider Manual
Mental Health and Substance Abuse Section,
April 1, 2016, p 120*

CMH's Supports Coordinator Supervisor testified that as supervisor she reviews requests for CLS submitted by supports coordinators on behalf of beneficiaries and determines the medical necessity of those services. CMH's Supports Coordinator Supervisor indicated that in the instant case she reviewed Petitioner's IPOS, her goals, met with staff and supervisors, and with Petitioner and concluded that the decision to reduce Petitioner's CLS hours to 42 hours per week was proper. CMH's Supports Coordinator Supervisor testified that Petitioner can be left alone for up to 4 hours per day and does not need support in the nighttime, approximately 8 hours, leaving ample CLS hours available for Petitioner to meet the goals in her IPOS. CMH's Supports Coordinator Supervisor indicated that Petitioner also has shared supports with her roommate, and she and the roommate are able to participate in community activities together. Based on her review of the records, CMH's Supports Coordinator Supervisor concluded that 42 CLS hours per week, when combined with Petitioner's other shared supports, and her informal supports, were sufficient in amount, scope and duration to meet the goals in Petitioner's IPOS.

Petitioner's provider testified that the problem with shared CLS hours in the household is that Petitioner's roommate is very active and uses more of the hours than Petitioner. Petitioner's provider indicated that this results in Petitioner sometimes being left alone more than 4 hours at a time. Petitioner's provider testified that Petitioner needs significant supports and prompting in order to remain safe in the home. Petitioner's provider indicated that Petitioner has very limited eyesight and needs assistance and prompting in the community as well. Petitioner's provider testified that Petitioner's hygiene suffers when she is left alone, as does her housekeeping. Petitioner's provider indicated that Petitioner also needs assistance taking her medications and sometimes uses vulgar or inappropriate language while in public. Petitioner's provider testified that while Petitioner is pretty independent, she needs a lot of prompting and reminding. Petitioner's provider admitted that she was present during the IPOS meeting and was able to raise her concerns regarding Petitioner's needs at that time.

Petitioner testified that she would be able to call 911 in case of an emergency.

Based on the evidence presented, it is determined that Respondent followed proper policy in determining the number of medically necessary CLS hours for Petitioner. The clinician who completed the utilization review took into account Petitioner's needs and the specific goals in her IPOS. At the time the decision was made, Petitioner was able to be left alone for 4 hours at a time and did not need assistance when sleeping. Petitioner and her roommate were sharing 12 hours of CLS per day, which would then be sufficient to meet Petitioner's goals and needs. Based on the information the CMH had at the time of the decision, the decision was supported by the evidence in the record.

Ultimately, Respondent has a mandate to allocate the limited funds it receives from the State to provide services to all eligible persons in its service area and the CLS process used here is an acceptable method for meeting that mandate. As indicated above, "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.”

Petitioner bears the burden of proving by a preponderance of the evidence that additional CLS services are medically necessary. Based on the foregoing analysis, Petitioner has failed to meet that burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly calculated Petitioner’s CLS services.

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

Petitioner

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

Authorized Hearing Rep.

[REDACTED]