



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: June 6, 2016
MAHS Docket No.: 16-005012
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner did not appear at the hearing. Petitioner's Guardians, [REDACTED] and [REDACTED]; and caregiver [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Assistant Coordinator of Due Process; [REDACTED], Director of Community Services; [REDACTED], Supports Coordinator Supervisor; and [REDACTED], Compliance Coordinator appeared the testify and represent the [REDACTED] County Community Mental Health (CMH or Department or State).

Respondent's Exhibit A pages 1-33 and Petitioner's Exhibit 1 were admitted as evidence.

ISSUE

Did the CMH properly determine that Petitioner'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. Petitioner is a Medicaid beneficiary.
2. Petitioner's date of birth is [REDACTED].

3. Petitioner is a [REDACTED] year old woman who receives services through [REDACTED], Inc. under the HAB Waiver.
4. Petitioner is non-ambulatory, nonverbal and requires assistance for Activities of Daily Living and Incidental Activities of Daily Living. She has no challenging behaviors. She has a seizure disorder which is under control with medication.
5. Petitioner receives the following services through Self-Determination: 10 hours per week of Community Living Services (CLS); 3.0 hours per day of home Help Services; 13 hours per week of Respite Care and 30 hours per week of vocational program care. She attends school.
6. 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.
7. On [REDACTED], Petitioner's Guardian requested that the Community Living Service hours be increased to 14 hours per week.
8. On [REDACTED], Petitioner filed a request for hearing seeking 14 hours of CLS hours.
9. On [REDACTED], a new annual IPOS was completed and Petitioner was notified that petitioner was eligible to receive 13 hours per week of of CLS.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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...

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) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

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. It states with regard to community living supports:

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, 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.

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, 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.

*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.

*Medicaid Provider Manual
Mental Health and Substance Abuse Section 17.3.1
Respite Care, Page 133*

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 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.

CMH contends that 13 hours of CLS per week is sufficient for Petitioner to reach his objectives. Petitioner attends school during the regular school year. 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 Petitioner's developmental disability, or assist the beneficiary to attain or delay progression of developmental disability, or assist the beneficiary to attain or maintain a sufficient level of functioning to meet objectives. In short, any additional hours of CLS would not meet medical necessity criteria set forth in Section 2.5A of the Medicaid Provider Manual.

Petitioner's representative requests 4 additional hours of CLS for sensory activity. The CMH representative stated that sensory training can be conducted in conjunction with natural supports. Originally, CLS was reduced from 14 hours to 10 hours because the hours were being used for home help services in [REDACTED]. Petitioner did not request a hearing for the reduction at that time.

Petitioner'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, Petitioner is currently being offered 13 CLS hours per week. While it is understandable that Petitioner's family has concerns with the hours

offered by CMH, the fact remains that if there are no issues with CLS staff, Petitioner will be receiving the 13 hours of CLS per week that his family desires for Petitioner. CMH indicates that Petitioner has made sufficient progress that his needs can be met with the approved hours. Based on Petitioner's current Individual Plan of Service (IPOS), 13 hours of CLS hours and 13 hours of RCS per week is sufficient in amount, scope and duration to meet Petitioner'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 Petitioner should receive 13 hours per week in Community Living Service hours and 10 hours per week of shared respite care hours based upon his current circumstances.

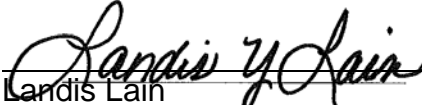
DECISION AND ORDER

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 Petitioner to achieve his IPOS goals under the circumstances. CMH and Petitioner agreed that Petitioner should receive three additional hours (13 total) of CLS in the new IPOS which is sufficient to meet Petitioner's needs.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

LL ■



Landis Lain

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]

Petitioner

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]