



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 28, 2016
MAHS Docket No.: 16-006098
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 June 22, 2016. [REDACTED], Petitioner's brother and guardian, appeared on Petitioner's behalf. [REDACTED], Petitioner's Placement Coordinator; [REDACTED], Petitioner's Caregiver; and [REDACTED], Petitioner's Supports Coordinator appeared as witnesses for Petitioner.

[REDACTED], Assistant Corporation Counsel, [REDACTED] (CMH), represented the Department. [REDACTED], Access Center Manager, appeared as a witness for the Department.

ISSUE

Did the CMH properly reduce Petitioner's 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 a [REDACTED] year old Medicaid beneficiary, born [REDACTED], receiving services through [REDACTED] (CMH). (Exhibits A, B; 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 Down's syndrome. (Exhibits A, B; Testimony)
3. Petitioner requires assistance with completing his ADL's. (Exhibits A, B; Testimony)
4. Petitioner lives with one roommate who also has a developmental disability and receives in-home services and supports. (Exhibits A, B; Testimony)
5. Petitioner's current services through CMH include supports coordination, community living supports (CLS) and skill building. Petitioner also receives 1 hour per day of Adult Home Help (AAH) through the Department of Health and Human Services. Previously, Petitioner had been receiving 19 CLS hours per day, and 40 skill building hours per week. Petitioner is out of the home for skill building Monday through Friday from 7:00 a.m. to 3:00 p.m. (Exhibits A, B; Testimony)
6. Following Petitioner's Annual Assessment on [REDACTED], Petitioner's Supports Coordinator requested that Petitioner's CLS hours remain at 543 units per week, or approximately 19 CLS hours per day. (Exhibits A, B; Testimony)
7. Following a review of Petitioner's request by the CMH Access Center, Petitioner was approved for 306 units of CLS per week, or approximately 11 CLS hours per day. The Access Center determined that when combined with Petitioner's skill building services and AHH, 11 CLS hours per day were sufficient in amount, scope and duration to meet the goals in Petitioner's Individual Plan of Service (IPOS). (Exhibits A, B; Testimony)
8. On [REDACTED] CMH sent Petitioner an Advance Action Notice informing him that the request for 543 units of CLS hours per week (approximately 19 CLS hours per day) had been denied, but that 306 units of CLS (approximately 11 CLS hours per day) had been approved. (Exhibits A, B; Testimony)
9. 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
April 1, 2016, pp 120, 122-123
Emphasis added.*

CMH's Access Center Manager testified that the Access Center makes level of care determinations for beneficiaries, approves on-going care, and connects beneficiaries with providers. CMH's Access Center Manager reviewed Petitioner's age, diagnoses, living situation, and the current services Petitioner is receiving through CMH. CMH's Access Center Manager 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 Access Center Manager also testified that in addition to the services Petitioner receives through CMH, he also receives Adult Home Help services and attends skill building for 8 hours per day, Monday through Friday each week. CMH's Access Center 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 Access Center Manager indicated that Petitioner's request for 19 CLS hours per day was denied because it was determined that 11 CLS hours per day, when combined with Petitioner's other authorized services, were sufficient in amount, scope and duration to meet Petitioner's needs. CMH's Access Center Manager noted that Petitioner's CLS hours were basically reduced by the amount of time it was expected that Petitioner would be sleeping each night because Petitioner would not be able to participate in any CLS activities while asleep.

Petitioner's brother and guardian testified that because of his Down's syndrome Petitioner is not really able to speak and has to communicate through gestures. Petitioner's brother and guardian indicated that Petitioner can never safely be left alone because he does not know how to care for himself or avoid danger. Petitioner's brother and guardian testified that Petitioner lived with his parents until they passed, and then tried a group home, but the group home did not work well for him. After the group home, Petitioner's brother and guardian indicated that they found Petitioner's current home with a roommate, who also receives supports and services in the home. Petitioner's brother and guardian testified that he feels with the reduced services, Petitioner will not be as safe or as happy.

Petitioner's Placement Coordinator testified that she is concerned about the reduction in CLS because Petitioner does get up at night and needs to be redirected during those times. Petitioner's Placement Coordinator indicated that Petitioner does not have the ability to call 911 in an emergency or to recognize danger. Petitioner's Placement Coordinator testified that Petitioner also has blood clots that need to be monitored at night. Petitioner's Placement Coordinator indicated that Petitioner does not know what a fire alarm is, has no fear of strangers, and his health and safety would be put in serious jeopardy with the reduced hours. Petitioner's Placement Coordinator did admit that including the roommate's supports and services there is always a paid caregiver in the home 24 hours per day, 7 days per week, who could assist Petitioner in an emergency.

Petitioner's Caregiver testified that she has been caring for Petitioner since his placement in his current residence and he does not do well with changes. Petitioner's Caregiver indicated that Petitioner is out of the home Monday through Friday from 7:00 a.m. to 3:00 p.m. for skill building, but he also has to stay home some days for appointments and skill building is sometimes cancelled for snow days or other emergencies. Petitioner's Caregiver indicated that on those days, Petitioner would need care during those hours since he cannot be left alone. Petitioner's Caregiver also questioned what would happen if Petitioner's roommate was hospitalized; his caregiver would not be there at night to assist Petitioner in an emergency. Petitioner's Caregiver testified that Petitioner also sometimes has diarrhea at night and requires cleaning.

Petitioner's Supports Coordinator testified that she understands that the CMH is reducing Petitioner's CLS hours for the time he will normally be sleeping, but that one element of CLS is for safety and Petitioner needs monitoring at night for his own safety.

Petitioner bears the burden of proving by a preponderance of the evidence that 19 hours of CLS per day are medically necessary. CMH provided sufficient evidence that it adhered to federal regulations and state policy when authorizing 11 hours per day of CLS for Petitioner. Petitioner failed to prove by a preponderance of the evidence that the additional 8 hours per day of CLS was medically necessary.

As indicated above, B3 services are not intended to meet all of a consumer's needs and preferences and the CMH must take into account its ability to serve other beneficiaries. Here, combining all of Petitioner's services, including CLS, skill building, and AHH, Petitioner receives support and services for approximately 16 hours per day, 7 days per week. And while Petitioner does need monitoring at night while he sleeps in case of an emergency, there is a paid staff member in the home 24 hours per day, 7 days per week, who could assist Petitioner in an emergency. If there comes a time when there is not a staff person in the home 24 hours per day, 7 days per week because Petitioner's roommate is in the hospital, or otherwise unavailable, then Petitioner's Supports Coordinator can request additional, emergency services to be authorized by CMH. Petitioner's Supports Coordinator can also explore other options for monitoring Petitioner while he sleeps, such as a video monitoring system, as well as other options

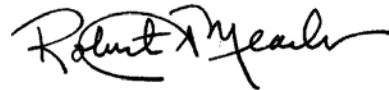
to be used in case of emergency, such as a Personal Emergency Response System (PERS). These alternatives may also be covered by Medicaid. Based on the evidence presented, the current amount of CLS authorized is sufficient in amount, scope and duration to reasonably meet Petitioner's needs.

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 19 CLS hours per day.

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

Counsel for Respondent

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]

Petitioner

[REDACTED]