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: November 7, 2016
MAHS Docket No.: 16-011468
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on October 13, 2016. [redacted], Petitioner's mother, appeared and testified on Petitioner's behalf. Petitioner and [redacted] a friend, also testified as witnesses for Petitioner. [redacted] represented the Respondent [redacted]. [redacted] Access Manager, testified as a witness for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request 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. Petitioner is a thirty-four-year-old Medicaid beneficiary who has been diagnosed with adjustment disorder, with mixed anxiety and depression; attention-deficit hyperactivity disorder; Asperger's syndrome; borderline intellectual functioning; hypertension; and diabetes. (Exhibit A, pages 21, 27, 37).

2. Due to his impairments and need for assistance, Petitioner had been approved for services through Respondent, including CLS. (Testimony of Respondent's witness).

3. As part of his services, Petitioner was previously approved for 20 hours of CLS. (Exhibit A, page 43; Testimony of Respondent's witness).

4. On February 19, 2016, a person-centered plan (PCP) meeting was held with respect to Petitioner's needs and services for the upcoming plan year. (Exhibit A, pages 41-47).

5. Petitioner's CLS was addressed in Goal #2 of Petitioner PCP, which provided:

> CLS to improve independent living skills, [Petitioner] said he wants to continue working on daily living skills so he can become more independent within his limitations as a person with Asperger's. He continues to need help & guidance with cooking, cleaning, laundry, grocery shopping and home organization. Consumer reports feeling he is learning how to do some of things somewhat more independently however feels he requires ongoing guidance at this time. His community integration to increase to 2-3x a week at different at Sterling Heights Special Recreation programs.

Exhibit A, page 43

6. On May 19, 2016, Respondent received a request for 10 hours per week of CLS for Petitioner for the time period of May 19, 2016 to September 24, 2016. (Exhibit A, page 9).

7. On May 23, 2016, Respondent sent Petitioner written notice that his CLS services were reduced because the documentation submitted did not justify the requested service. (Exhibit A, pages 5-7).

8. Specifically, Petitioner was approved for the requested 10 hours per week, but only until June 19, 2016. (Exhibit A, page 10).

9. As provided in the notice sent to the CLS provider:

> Time of request reduced to provide services for consumer and prevent lapse in services; however, PCP goals/objectives must be S.M.A.R.T.: Specific, Measurable, Attainable, Realistic, and Timely. Provider may resubmit an auth request for remaining units when

> documentation supports medical necessity. Objective does not identify what skills be worked, what staff will be responsible for and what time frames each skill will be allotted in order for the consumer to make progress in the functional areas addressed in the intake and goal for the consumer. A due process letter will be sent.
>
> *Exhibit A, page 10*

10. On June 16, 2016, Respondent received a request for continuation of 10 hours per week of CLS. (Exhibit A, page 16).

11. Petitioner's PCP had not been amended since the time of the earlier request and no additional information was provided. (Testimony of Respondent's witness).

12. On June 18, 2016, Respondent sent Petitioner written notice that the request for CLS after June 19, 2016 had been denied on the basis that the documentation submitted did not justify the requested service. (Exhibit A, pages 12-14).

13. On August 22, 2016, the Michigan Administrative Hearing System received the request for hearing filed in this matter regarding the June 18, 2016 denial of Petitioner's request for CLS. (Exhibit A, pages 18-19).

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).

Here, as discussed above, Petitioner had been receiving CLS through Respondent. With respect to such services, the Medicaid Provider Manual (MPM) provides:

> **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 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. 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 DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the 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 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 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.
>
> 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 DHS 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.
>
> *MPM, April 1, 2016 version*
> *Behavioral Health and Intellectual and Developmental Disability Supports and Services*
> *Pages 122-123*

However, while CLS is a covered service, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services and the Specialty Services and Support program waiver did not affect the federal Medicaid regulation that requires that authorized services be medically necessary. *See* 42 CFR 440.230.

Regarding medical necessity, the MPM also provides:

> **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.

MPM, April 1, 2016 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 13-14
(Emphasis Added)

Additionally, Respondent's internal Managed Care Organization (MCO) policies provide in part that, through the PCP process, an individual and those who support him or her must:

> a. Focus on the individual's life goals, interests, desires, preferences, strengths and abilities as the foundation for the planning process.
> b. Identify outcomes based on the individual's life goals, interests, strengths, abilities, desires and preferences.
> c. Make plans for the individual to work toward and achieve identified outcomes.
> d. Determine the services and supports the individual needs to work toward or achieve outcomes including, but not limited to, services and supports available through the community mental health system.

Exhibit A, page 53

Similarly, Respondent's internal MCO policies provided that the essential elements for person-centered planning includes:

> Outcome-Based. Outcomes in pursuit of the individual's preferences and goals are identified as well as services and supports that enable the individual to achieve his or her goals, plans, and desires and any training needed for the providers of those services and supports. The way for measuring progress toward achievement of outcomes is identified.

Exhibit A, page 54

Here, as discussed above, Petitioner initially requested 10 hours a week of CLS for 6 months, but Respondent only approved the request for 1 month after finding that the documentation submitted did not justify the requested service. Moreover, after

Petitioner submitted another request for 10 hour per week of CLS approximately a month later, Respondent denied Petitioner's request altogether.

In support of that decision, Respondent's witness testified, while Petitioner was previously receiving 20 hours per week of CLS, only 10 hours per week was requested in this case and it was only initially approved for one month because the goal in the PCP regarding CLS was not specific regarding what skills would be worked on with which staff and for how long, and it was not measurable in terms of what progress had been expected or reached. Respondent's witness also testified that the CLS was authorized for one month in order to prevent a lapse in services and for Petitioner to gather information and/or amend the PCP to justify the requested services pursuant to the above policies. However, after the one-month authorization expired, Respondent only received another request for 10 hours of CLS per week without any additional information or amendment to the PCP, and it therefore denied the request.

In response, Petitioner's representative testified that she and Petitioner were asking for 15-20 hours per week of CLS and that Petitioner's situation is deteriorating without those services. She also testified that Petitioner needs significant assistance with both his activities of daily living and integration into the community. Petitioner's representative further testified that she knows Petitioner's file and PCP need to be updated, but that she thought Petitioner's supports coordinator was taking care of it

[redacted], a friend of Petitioner's, also testified that he has noticed differences in Petitioner caused by a lack of care and that Petitioner should not be punished for the failings of others.

Petitioner testified that he needs assistance.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying his request for CLS hours. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that Respondent's decision must therefore be affirmed. It does not appear that anything has changed with respect to Petitioner's conditions or needs, and Petitioner may continue to need CLS. However, as argued by Respondent, the PCP fails to specify the scope, amount, and duration of services and supports needed to achieve measurable outcomes related to the consumer's goals and, given that lack of information, no medical necessity for services was demonstrated. Moreover, while Petitioner's witnesses argue that the fault in developing Petitioner's PCP properly lies with Petitioner's independent supports coordinator and that Petitioner should not be punished for someone else's mistake, Respondent can only base its decision on what is

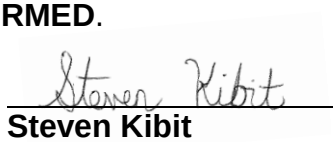
submitted to it and it gave Petitioner a month of continued services so that Petitioner could amend his plan or submit additional information, which did not occur.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for CLS.

IT IS THEREFORE ORDERED that

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



SK/tm

Steven Kibit
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]

[redacted]

[redacted]

[redacted]

[redacted]