



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 5, 2016
MAHS Docket No.: 16-001404
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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]. [REDACTED] appeared on behalf of the Petitioner. [REDACTED] L.M.S.W., advocate appeared as a witness for the Petitioner. [REDACTED], Manager of due process represented the [REDACTED] County CMHSP (Department). [REDACTED], Self-Determination Coordinator and [REDACTED], Assistant Director of Community Living Supports appeared as witnesses for the Department.

Exhibits

Petitioner: None
Department: Exhibit A – Hearing Summary

ISSUE

Did the CMH properly reduce Appellant'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. The Department is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services.
2. Petitioner is a [REDACTED] year-old [REDACTED] who has been diagnosed with an intellectual disability and diabetes. (Ex A, pp 2, 22; Testimony.)

3. Prior to [REDACTED], the Petitioner was allocated 104 hours a week of CLS; 8 hours a week of Skill building and 338 miles per month for transportation for community integration. (Ex A, p 1; Testimony.)
4. The Petitioner's support needs are primarily for reminding, guiding and observation during work, volunteer duties and community participation. (Ex A, p 1; Testimony.)
5. On [REDACTED], the Petitioner, [REDACTED] and [REDACTED] attended a Person Centered Planning (PCP) meeting. (Ex A, pp 2-7; Testimony.)
6. At the time of the [REDACTED] PCP meeting, the Petitioner did not indicate any dissatisfaction with his supports. (Ex A, p 6; Testimony.)
7. At the time of the [REDACTED] PCP meeting, [REDACTED] did not request additional blood glucose readings. (Testimony.)
8. Around the time of [REDACTED], the Department was made aware of the Petitioner being awarded an Adult Home Help benefits in the amount of 39 hours a month. (Exhibit A, p 2; Testimony.)
9. As a result of the Petitioner being awarded 39 hours a month of adult home help benefits, the Department determined a reduction of CLS hours was necessary to avoid a duplication of Medicaid services. The Department determined, a reduction of CLS hours to 95 hours a week in combination with the Adult Home Help award was sufficient in the amount, scope and duration to reasonably achieve the Petitioner's goals for independence, productivity and community inclusion. (Exhibit A, p 2; Testimony.)
10. On [REDACTED], the Petitioner was presented with a copy of a new plan which included a CLS reduction and a notice of his right to appeal the new authorization amount. (Exhibit A, pp 8-23.)
11. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received from the Petitioner a request for hearing regarding the [REDACTED] reduction in CLS hours.

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).

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, October 1, 2015
Mental Health/Substance Abuse Chapter, pages 122, 123*

However, while CLS are covered services, 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.

In this case, CLS hours were reduced based upon the award of Adult Home Help benefits. The reduction was an approximate hour for hour reduction. So for every hour of Adult Home Help awarded, one hour of CLS was subtracted.

The Petitioner did not identify how his needs could not be met or how exactly he would suffer if a reduction was implemented. Specifically, the Petitioner did not show any harm by the reduction or pinpoint how his goals could not be met.

The Petitioner did argue about blood glucose readings and the need for supports at different times of the day. The Petitioner however, did not specifically identify how these requirements could not be met by the proposed CLS allocation and the Home Help benefits being awarded. Additionally, there was evidence to suggest, the Petitioner's hours of service were flexible and could be scheduled in a manner to meet the Petitioner's needs.

Based upon the evidence presented, I find the reduction in CLS hours was to avoid a duplication of Medicaid services and that the reduction in CLS hours is still sufficient in their amount, scope and duration to achieve the Petitioner's goals.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Petitioner's CLS hours.

IT IS THEREFORE ORDERED that

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

CA ■



Corey Arendt
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]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]