STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: May 2, 2016
MAHS Docket No.: 16-002607
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's mother and Authorized Hearings Representative [redacted] appeared and testified on behalf of the Petitioner. Petitioner did not appear at the hearing. [redacted] (P[redacted]) Assistant Corporate counsel represented the [redacted] County Community Mental Health ([redacted] or Respondent). Dr. [redacted], Program Supervisor [redacted] County [redacted] appeared and testified on behalf of [redacted].

Respondent's Exhibits (Attachments) A-E (pages 1-39) were admitted as evidence.

ISSUE

Did MCCMH properly determine that Petitioner's Community Living Supports (CLS) hours should be 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, date of birth [redacted].

2. Petitioner was receiving 15 hours per week in CLS hours.

3. On [redacted], the [redacted] [redacted] sent Petitioner Notice that CLS hours would be reduced from 15 to 10 hours per week.

4. On [redacted] Petitioner's Representative filed a request for a hearing to contest the reduction of CLS hours with the Michigan Administrative Hearing system.

5. On [redacted] the [redacted] received the request for a hearing.

6. Petitioner is diagnosed with Autistic disorder.

7. Petitioner attends [redacted] School in a severely multiple impaired (SXI) classroom. He is non-verbal and has extremely low fine motor skills. He wears ankle foot orthosis (AFO) braces for both feet due to his foot dragging when he walks. He requires complete assistance with all activities of daily living and constant supervision. He has no awareness of safety and will chew on "anything he can get his hands on' including potentially fatal items. He is unable to walk up the stairs without assistance.

8. Petitioner's current services approval includes physical therapy, occupational therapy, speech therapy, community living supports (10 hours per week), respite care (15 hours per week), medication reviews, supports coordination, and shared parenting services. (Attachment C)

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).

CMH contracts with the Michigan Department of Community Health 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, Mental Health/Substance Abuse,* section articulates Medicaid policy for Michigan. Its 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.

Medicaid Provider Manual
Mental Health and Substance Abuse Section
January 1, 2014, pp 113-114.

The Medicaid Provider Manual explicitly states that recipients of B3 supports and services, the category of services for which Appellant 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.I
Respite Care, Page 133

CMH is mandated by federal regulation to perform an assessment for the Appellant 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.

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. (Attachment F)

The evidence on the record indicates that the [redacted] reduced the amount of CLS services that were requested because 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 independence and community integration. It is also 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. Petitioner is receiving 10 hours per week of CLS in addition to attending school full time and therapies. Several goals, such as toilet training, putting away toys, using utensils, putting shoes on the correct feet, washing hands, and brushing teeth are a level of care that is appropriate for a parent to provide.

CMH further contends that additional hours of CLS cannot be expected to treat, ameliorate, diminish or stabilize the symptoms of Appellant's developmental disability, or assist the beneficiary to attain or delay progression of his developmental disability, or assist the beneficiary to attain or maintain a sufficient level of functioning to meet his objective. 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 alleges that she has seven month old twins and needs more help. Petitioner does not have shared parenting services and she was told that it was for clients who are over the age of 18. Petitioner's representative testified that that she does not work outside the home. Her husband works six days a week, sometimes seven. Petitioner sleeps from about nine-thirty at night until seven in the morning. Five days per week he attends school. He gets on the bus at about 8:15 AM and gets home around 3:55 PM, unless he has to go to therapy. He attends therapy three times per week from 2-4 PM or 3-7 PM. One of Petitioner's parents accompanies him to therapy to change his diaper if need be. She is by herself all day Saturday with Petitioner.

Evidence on the record indicates that Petitioner is at home and awake 5 days per week

for approximately one hour in the morning (5 hours) and 5 hours in the evenings (25 hours) He is home and awake 28 hours (14 hours per day) on the weekends; which equals a total of approximately 58 hours per week. Petitioner receives approximately six hours of therapy per week which takes the number to 52 hours per week. He receives 15 hours per week of respite care which leaves 37 hours. He receives 10 hours of CLS hours which leaves 27 hours per week in which Petitioner is awake* (not sleeping) and in his parents' sole care. MCCMH indicates that there is also an authorization in place for shared parenting which is not currently being utilized, according to Petitioner's Representative.

This Administrative Law Judge finds that the Individual Plan of Service (IPOS) expectation that the Petitioner's parents and natural supports must provide sole care to Petitioner for approximately 27 hours per week when Petitioner is awake is not inappropriate under the circumstances.

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 Appellant should receive 10 hours per week in Community Living Service hours based upon his current circumstances. Based on Petitioner's current Individual Plan of Service (IPOS), 10 hours of CLS per week, in conjunction with other approved services is sufficient in amount, scope and duration to meet Petitioner's medically necessary needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly authorized CLS in an amount that is sufficient in scope and duration to reasonably allow Appellant to achieve his IPOS goals under the circumstances.

IT IS THEREFORE ORDERED that:

The CMH decision is **AFFIRMED**.

LL/[redacted]

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

Petitioner [redacted]

DHHS -Dept Contact [redacted]

Counsel for Respondent [redacted]

DHHS-Location Contact [redacted]