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: March 10, 2017
MAHS Docket No.: 16-019040
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 a request for a hearing filed on Petitioner's behalf.

After due notice, a telephone hearing was held on February 15, 2017. [redacted], social worker, appeared and testified on Petitioner's behalf. [redacted], Petitioner's mother and power of attorney, was also present for Petitioner. [redacted] Fair Hearings Officer, appeared and testified on behalf of the Respondent [redacted]. [redacted] Clinical Services Department Head, also testified as a witness for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request for mileage reimbursement?

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 twenty-eight-year-old Medicaid beneficiary who is his own guardian and who been diagnosed with partial complex seizures; cerebral palsy; spasticity; low blood sugar; uncontrolled seizure; agenesis of the callosum; hydrocephalus; mild hyptotonia; shunt and poor coordination; thyroid problems; and irritable bowel syndrome. (Exhibit A, pages 7-8).

2. On August 11, 2016, Petitioner presented at Respondent's office and requested services through it. (Exhibit A, page 1).

3. Petitioner had previously been receiving services through Michigan's Habilitation Supports Waiver (HSW) in [redacted] County, including fifty-five

(55) hours per week of Community Living Supports (CLS), respite care services, and psychiatric services; but had also recently moved to [redacted] County and was presenting at Respondent in order to resume services. (Exhibit A, page 7).

4. Respondent then completed an Initial Bio-Psycho-Social Assessment with Petitioner that day. (Exhibit A, pages 7-11).

5. During that assessment, it was noted that Petitioner lives with mother and step-father, but likes to be as independent as possible and that he has a paper route two days a week in [redacted] Michigan, and volunteers two a days a week in [redacted], Michigan. (Exhibit A, pages 7-8).

6. It was determined during the assessment that Petitioner met the criteria for services through Respondent and the HSW. (Exhibit A, page 11).

7. An Individual Plan of Services (IPOS) with respect to Petitioner was subsequently developed for the time period of September 2, 2016 through August 10, 2017. (Exhibit A, pages 20).

8. In that IPOS, Petitioner was approved for CLS and respite care through Respondent's Self Determination Program. (Exhibit A, page 13).

9. As part of his CLS, Petitioner's staff was to assist him with completing his paper route, volunteering at church, and other community activities. (Exhibit A, pages 15-20).

10. An estimated individual budget was also developed. (Exhibit 1, page 8; Exhibit A, page 21).

11. No money was allocated in that budget for transportation costs. (Exhibit 1, page 8; Exhibit A, page 21).

12. However, Petitioner and his mother had requested the same services Petitioner was receiving in [redacted] County, including funds for mileage reimbursement for Petitioner for the use of his car in completing his paper route, volunteering or other community activities. (Exhibit A, page 24; Testimony of Petitioner's representative).

13. Although the CLS workers were the ones driving Petitioner, the mileage reimbursement was paid to Petitioner as it was his car that was used. (Testimony of Petitioner's representative).

14. Petitioner and his mother declined to sign the IPOS until the mileage reimbursement was added. (Exhibit A, page 23).

15. In reviewing that request, Respondent contacted the agency that authorized Petitioner's services when he lived in [redacted] County and a representative for that agency confirmed by e-mail that it been providing mileage reimbursement to Petitioner as part of his Medicaid services. (Exhibit A, page 28).

16. The e-mail also indicated that, while the agency in [redacted] County had done it, "[w]ith recent legal interpretation of the Medicaid rule –we have stopped." (Exhibit A, page 28).

17. Respondent subsequently determined that the request could not be granted. (Testimony of Respondent's representative).

18. On November 30, 2016, Respondent sent Petitioner written notice that his request for mileage reimbursement was denied. (Exhibit 1, pages 5-6; Exhibit A, pages 1-2).

19. Regarding the reason for the denial, the notice stated in part:

> Services you had requested as a consumer were denied/limited because Your [sic] request to be reimbursed mileage when CLS staff, through your self-determination arrangement, are driving his vehicle is being denied for the following reasons: 1) Medicaid regulations do not allow for a consumer to be paid mileage when CLS are using a care that is owned by the consumer/the family (and the vehicle in question is not owned by [Petitioner]); 2) the reasons for the request do not meet the criteria for transportation as a CLS service and are therefore not medically necessary.
>
> *Exhibit 1, page 5*
> *Exhibit A, page 1*

20. That same day, Respondent's representative also sent Petitioner's mother a letter identifying the same reasons for denial, with further explanation provided. (Exhibit A, pages 3-6).

21. On December 22, 2016, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed in this matter regarding the denial of his request for mileage reimbursement. (Exhibit 1, pages 1-30).

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 has been receiving CLS through Respondent pursuant to the HSW and, with respect to such services, the applicable version of the Medicaid Provider Manual (MPM) states:

> **SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**
>
> Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to retain eligibility. ***Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used.*** The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.
>
> HSW beneficiaries must be enrolled through the MDHHS enrollment process completed by the PIHP. The enrollment process must include annual verification that the beneficiary:
>
> - Has a developmental disability (as defined by Michigan law);
> - Is Medicaid-eligible;
> - Is residing in a community setting;

- If not for HSW services, would require ICF/IID level of care services; and

- Chooses to participate in the HSW in lieu of ICF/IID services.

The enrollment process also includes confirmation of changes in the beneficiary's enrollment status, including termination from the waiver, changes of residence requiring transfer of the waiver to another PIHP, and death. Termination from the HSW may occur when the beneficiary no longer meets one or more of the eligibility criteria specified above as determined by the PIHP, or does not receive at least one HSW service per month, or withdraws from the program voluntarily, or dies. Instructions for beneficiary enrollments and annual re-certification may be obtained from the MDHHS Bureau of Community Mental Health Services. (Refer to the Directory Appendix for contact information.)

The PIHP shall use value purchasing for HSW services and supports. The PIHP shall assist beneficiaries to examine their first- and third-party resources to pursue all reimbursements to which they may be entitled, and to make use of other community resources for non-PIHP covered activities, supports or services.

Reimbursement for services rendered under the HSW is included in the PIHP capitation rate.

Beneficiaries enrolled in the HSW may not be enrolled simultaneously in any other §1915(c) waiver.

Habilitation services under the HSW are not otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973.

15.1 WAIVER SUPPORTS AND SERVICES

Community Living Supports (CLS)	***Community Living Supports (CLS) facilitate an individual's independence, productivity, and promote inclusion and participation.*** The supports can be

	provided in the beneficiary's residence (licensed facility, family home, own home or apartment) and in community settings (including, but not limited to, libraries, city pools, camps, etc.), and may not supplant other waiver or state plan covered services (e.g., out-of-home nonvocational habilitation, Home Help Program, personal care in specialized residential, respite). ***The supports are:*** ▪ Assisting (that exceeds state plan for adults), prompting, reminding, cueing, observing, guiding and/or training the beneficiary with: ➢ Meal preparation; ➢ Laundry; ➢ Routine, seasonal, and heavy household care and maintenance (where no other party, such as a landlord or licensee, has responsibility for provision of these services); ➢ Activities of daily living, such as bathing, eating, dressing, personal hygiene; and ➢ Shopping for food and other necessities of daily living. ▪ ***Assistance, support and/or training the beneficiary with:*** ➢ Money management; ➢ Non-medical care (not

	requiring nurse or physician intervention); ➢ Socialization and relationship building; ➢ ***Transportation (excluding to and from medical appointments that are the responsibility of Medicaid through DHS or health plan) from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence);*** ➢ Leisure choice and participation in regular community activities; ➢ Attendance at medical appointments; and ➢ Acquiring goods and/or services other than those listed under shopping and non-medical services. ▪ Reminding, observing, and/or monitoring of medication administration. The CLS do not include the costs associated with room and board. ***Payments for CLS may not be made, directly or indirectly, to responsible relatives (i.e., spouses or parents of minor children) or the legal guardian.*** For beneficiaries living in unlicensed homes, CLS assistance

	with meal preparation, laundry, routine household care and maintenance, ADLs, 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 DHS' allowable parameters. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help. CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, State Plan coverage of Personal Care in Specialized Residential Settings. If beneficiaries living in unlicensed homes need assistance with meal preparation, laundry, routine household care and maintenance, ADLs, and/or shopping, the beneficiary must request Home Help and, if necessary, Expanded Home Help from MDHHS. CLS may be used for those activities while the beneficiary awaits determination by MDHHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP must assist with applying for Home Help or submitting a request for a Fair Hearing when the beneficiary believes that the MDHHS authorization of amount, scope and duration of Home Help does not accurately reflect his or her needs. CLS may also be used for those activities while the beneficiary awaits the decision

	from a Fair Hearing of the appeal of a MDHHS decision. 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, 2016 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 102-104
(Emphasis added)

Moreover, within the HSW, Petitioner receives his CLS through a self-determination agreement. Regarding the system of self-determination, the approved policies in the HSW application provide as an overview that:

> Michigan has a long history of supporting opportunities for participant self-direction. In the early 1990's, as one of the eight Community Supported Living Arrangements (CSLA) states, Michigan collaborated with consumers of developmental disability services, their family members, advocates, providers, and other stakeholders to develop and operate a variety of Medicaid-funded services and supports pilots. These pilots were tightly governed under a values template of consumer choice and control. In 1995, when the Congressional "sun" set on the federal CLSA program, all of the CSLA consumers and as many of that program's self-directed features as the state was able to negotiate within its renewal were incorporated within this Waiver program. In 1996, the Michigan legislature made person-centered planning a requirement for all participants receiving services and supports under the Mental Health Code. Since 1997, when Michigan was awarded its Robert Wood Johnson Self-Determination demonstration grant, MDCH has continued to build the demand and capacity for arrangements that support self-determination. Elements of participant direction are embedded in both policy and practice from Michigan's Mental Health Code, the Department's Person-Centered Policy Practice Guideline and Self-Determination Policy and Practice Guideline, the contract requirements in the contracts between the state and the PIHPs, and technical assistance at the state level for multiple methods for implementation by the PIHP.
>
> The Self-Determination Policy and Practice Guideline requires that PIHP/CMHSPs "assure that full and complete information about self-determination and the manner in which it may be accessed and applied is available to each consumer. This shall include specific examples of alternative ways that a consumer may use to control and direct an individual budget, and the obligations associated with doing this properly and successfully." (I.C. page 4). Moreover, the policy states: "A CMHSP shall actively support and facilitate a consumer's application of the principles of self-determination in the accomplishment of his/her plan of services." (I.E.. page 4).

(a) The nature of the opportunities afforded to participants

Waiver participants have opportunities for both employer and budget authority. Participants may elect either or both budget authorities and can direct a single service or all of their services for which participant direction is an option. The participant may direct the budget and directly contract with chosen providers. The individual budget is transferred to a fiscal intermediary (this is the Michigan term for an agency that provides financial management services or FMS) which administers the funds and makes payment upon participant authorization.

There are two options for participants choosing to directly employ workers: the Choice Voucher System and Agency with Choice. Through the first option, the Choice Voucher System, the participant is the common law employer and delegates performance of the fiscal/employer agent functions to the fiscal intermediary, which processes payroll and performs other administrative and support functions. The participant directly recruits, hires and manages employees. Detailed guidance to PIHP entities is provided in the Choice Voucher System Technical Advisory. In the Agency with Choice model, participants may contract with an agency with choice and split the employer duties with the agency. The participant is the managing employer and has the authority to select, hire, supervise and terminate workers. As co-employer, the agency is the common law employer, which handles the administrative and human resources functions and provides other services and supports needed by the participant. The agency may provide assistance in recruiting and hiring workers. Detailed guidance to PIHP entities is provided in the Agency with Choice Technical Advisory. A participant may select one or both options. For example, a participant may want to use the Choice Voucher System to directly employ a good friend to provide CLS during the week and Agency with Choice to provide CLS on the weekends.

(b) how participants may take advantage of these opportunities

Information on the self-determination is provided to all participants who enroll or are currently enrolled in the HSW. Participants interested in arrangements that support self-

determination start the process by letting their supports coordinator or other chosen qualified provider know of their interest. The participants are given information regarding the responsibilities, liabilities and benefits of self-determination prior to the PCP process. An individual plan of service (IPOS) will be developed through this process with the participant, supports coordinator or other chosen qualified provider, and allies chosen by the participant. The plan will include the HSW waiver services needed by and appropriate for the participant. An individual budget is developed based on the services and supports identified in the IPOS and must be sufficient to implement the IPOS. The participant will choose service providers and have the ability to act as the employer. In Michigan, PIHPs provide many options for participants to obtain assistance and support in implementing their arrangements.

c) the entities that support individuals who direct their services and the supports that they provide PIHPs are the primary entities that support participants who direct their services. Supports coordinators, supports coordinator assistants, or independent support brokers (or other qualified provider chosen by the participant) are responsible for providing support to participants in arrangements that support self-determination by working with them through the PCP process to develop an IPOS and an individual budget. The supports coordinator, supports coordinator assistant, or independent supports broker is responsible for obtaining authorization of the budget and plan and monitoring the plan, budget and arrangements. Supports coordinators, supports coordinator assistants, or independent supports brokers (or other qualified provider chosen by the participant) make sure that participants receive the services to which they are entitled and that the arrangements are implemented smoothly. Participants are provided many options for Independent Advocacy, through involvement of a network of participant allies and independent supports brokerage, which are described in Section E-1k below.

Through its contract with MDCH, each PIHP is required to offer information and education to participants on participant direction. Each PIHP also offers support to participants in these arrangements. This support can include offering required training for workers, offering peer-to-peer

> discussion forums on how to be a better employer, or providing one-on-one assistance when a problem arises.
>
> Each PIHP is required to contract with one or more fiscal intermediaries to provide financial management services.
> Fiscal Intermediary Services is a service in the state's §1915(b) Waiver. The fiscal intermediary performs a number of essential tasks to support participant direction while assuring accountability for the public funds allotted to support those arrangements. The fiscal intermediary has four basic areas of performance:
> - function as the employer agent for participants directly employing workers to assure compliance with payroll tax and insurance requirements;
> - ensure compliance with requirements related to management of public funds, the direct employment of workers by participants, and contracting for other authorized goods and services.
> - facilitate successful implementation of the arrangements by monitoring the use of the budget and providing monthly budget status reports to participant and agency; and
> - offer supportive services to enable participants to direct the services and supports they need.
>
> *HSW Application*
> *Appendix E-1: Overview (1 of 13)*

Furthermore, with respect to the participant-directed budget in the self-determination program, the approved policies in the HSW application also provide that

> An individual budget includes the expected or estimated costs of a concrete approach of obtaining the mental health services and supports included in the IPOS (SD Guideline II.C.). Both the individual plan of service (IPOS) and the individual budget are developed in conjunction with one another through the person-centered planning process (PCP) (SD Guideline II. A.). <u>Both the participant and the PIHP must agree to the amounts in the individual budget before it is authorized for use by the participant. This agreement is based not only on the amount, scope and duration of the services and supports in the IPOS, but also on the type of arrangements that the participant is using to obtain the services and supports. Those arrangements are also determined primarily through the PCP process.</u>

Michigan uses a retrospective zero-based method for developing an individual budget. The amount of the individual budget is determined by costing out the services and supports in the IPOS, after a IPOS that meets the participant's needs and goals has been developed. In the IPOS, each service or support is identified in amount, scope and duration (such as hours per week or month). The individual budget should be developed for a reasonable period of time that allows the participant to exercise flexibility (usually one year).

Once the IPOS is developed, the amount of funding needed to obtain the identified services and supports is determined collectively by the participant, the mental health agency (PIHP or designee), and others participating in the PCP process.

This process involves costing out the services and supports using the rates for providers chosen by the participant and the number of hours authorized in the IPOS. The rate for directly employed workers must include Medicare and Social Security Taxes (FICA), Unemployment Insurance, and Worker's Compensation Insurance. The individual budget is authorized in the amount of that total cost of all services and supports in the IPOS. The individual budget must include the fiscal intermediary fee if a fiscal intermediary is utilized.

Participants must use a fiscal intermediary if they are directly employing workers and/or directly contracting with other providers that do not have contracts with the PIHPs. If a participant chooses to contract only with providers that are already under contract with the PIHP, there is no requirements [sic] that a fiscal intermediary be used.

Fiscal intermediary is a §1915(b) waiver service and is available to any participant using a self-determination arrangement. Each PIHP develops a contract with the fiscal intermediary to provide financial management services (FMS) and sets the rate and costs for the services. The average monthly fee has ranged from [redacted].

> Actual costs for the FMS will vary depending on the individual's needs and usage of FMS, as well as the negotiated rate between the PIHP and fiscal intermediary.
>
> *HSW Application*
> *Appendix E-2: Opportunities for Participant-Direction (3 of 6)*
> *(Emphasis added)*

Regarding transportation assistance, the Michigan Department of Community Health Frequently Asked Questions on Self-Determination and Choice Voucher for Children also provides in part:

> **38. Can assets be purchased using capitated funds, such as vehicles?**
>
> The general answer is, no. Medicaid prohibits the purchase of vehicles. However, environmental modifications and prescribed adaptive equipment can be purchased.
>
> **39. a. Can we use capitated funds to pay vehicle leases, or vehicle insurance/plates/gas/maintenance, etc. for vehicles used to assist the person receiving services to access the community?**
>
> No. However, if a person is authorized for transportation as a service, mileage for approved transportation could be paid to a provider or gas cards could be provided to the person receiving services if he or she is using his or her own vehicle.
>
> **b. What about mileage reimbursement to people who provide CLS when they use their personal vehicles while directly providing CLS?**
>
> Yes, mileage can be paid to CLS provider if mileage is an approved service identified in the person's IPOS.
>
> **c. We are currently paying mileage for employees as they travel to the person receiving services home to work. Is this allowable?**

> The rate for CLS workers can include reimbursement for mileage for the cost of traveling to and from work.
>
> *Exhibit A, page 63*

Here, Petitioner requested the same services he had previously been receiving in [redacted] County, including CLS and mileage reimbursement for Petitioner for the use of his car in completing CLS activities. However, Respondent denied that request for mileage reimbursement on the basis that (1) Medicaid regulations do not allow for a consumer to be paid mileage when CLS workers are using a car that is owned by the consumer/the family and (2) the reasons for the request do not meet the criteria for transportation as a CLS service and are therefore not medically necessary. Petitioner then appealed that determination.

In support of Respondent's decision, Respondent's witnesses testified that the specific action at issue in this case was the denial of a request for mileage reimbursement to be paid to Petitioner for CLS staff transporting him in his car and that, as described in the above guidelines, mileage for approved transportation can only be paid to the provider. Moreover, while other options may be available to meet Petitioner's needs, such as CLS staff using their own cars and being reimbursed for mileage or Petitioner receiving gas cards for use of his own vehicle, none other options were requested and implementing them would require reopening the planning process, which Petitioner has declined to do. Respondent's representative also noted that the option of gas cards was discussed during a local appeal, but that the ownership of the car may be a potential issue if the option is requested as the MPM states that CLS payments may not be made, directly or indirectly, to responsible relatives and it appears that Petitioner's mother owns the car. Respondent's representative further testified that it does not appear that the mileage reimbursement being requested relates to CLS and that, instead, the applicable goal in Petitioner's plan looks more like pre-vocational or supported employment services.

In response, Petitioner's representative testified that a medical professional treating Petitioner has expressly prohibited Petitioner from using public transportation and that the only method by which Petitioner can utilize his approved CLS is through the use of his own car because his CLS workers do not own cars. She also testified that the car is Petitioner's car and that the only reason he does not hold title to it is because he does not have a license and, per Michigan Secretary of State, a non-licensed person cannot hold title to a car. Regarding the request at issue in this case, Petitioner's representative testified that the request was for mileage reimbursement, but that they did not care what form the reimbursement takes, whether it be cash for Petitioner, as he previously received in [redacted] County, or the form of gas cards beforehand. Petitioner's representative further argued that they are not asking for anything more than what Petitioner is entitled to and that he would be using his services correctly and as outlined in the IPOS approved by Respondent.

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

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Respondent erred; its decision must therefore be reversed; and it must reassess Petitioner's request.

To the extent Respondent takes the position that the requested reimbursement must be denied because it is does not meet the criteria for transportation as a CLS service, its argument is unpersuasive. CLS services facilitate an individual's independence, productivity, and promote inclusion and participation; and such supports may include assistance with transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence. Moreover, it is also undisputed that if a person is authorized for transportation as part of his CLS services, costs related to transportation may also be approved when appropriate and, while Respondent now asserts that Petitioner's utilization of CLS appears to relate more to pre-vocational or supported employment services, it previously approved the goals and objectives of Petitioner's plan and the possibility that other services could also encompass Petitioner's approved use of his CLS does not mean that his use is improper or that his request should be denied.

Similarly, to the extent Respondent asserts that Medicaid regulations do not allow for a consumer to be paid mileage when CLS are using a car that is owned by Petitioner or his family, its argument must also be rejected. Notably, while the notice of denial states that "Medicaid regulations" prohibit the requested reimbursement in this case, Respondent fails to cite to any such regulations. Instead, Respondent solely relies on a Frequently Asked Questions form from the Department that, while relevant, is not promulgated policy and is not dispositive in this case. As described above, two goals of the HSW's self-determination option are to provide a beneficiary with flexibility and the ability to direct his own care and Respondent's denial contradicts those goals, especially given that the passage relied upon by Respondent expressly allows for a beneficiary to receive monetary assistance with transportation when necessary, albeit in the form of gas cards.

Lastly, to the extent Respondent suggests that Petitioner's mother/POA is the owner of the car and that she cannot be reimbursed under the applicable policy, its argument is also unpersuasive. The MPM does provide that payments for "CLS may not be made, directly or indirectly, to responsible relatives (i.e., spouses or parents of minor children) or the legal guardian." However, Petitioner is not a minor, he does not have a guardian, and there is no showing that his mother, even if she owned the car, is a responsible relative. The mere fact that Petitioner's mother has a power of attorney does not make her a responsible relative under the applicable policy.

Accordingly, while the specific amount of mileage reimbursement needed is unclear and a new individual budget may need to be developed, the undersigned Administrative Law Judge finds that Respondent erred by denying the request for the reasons Respondent stated and, consequently, the decision must be reversed and Petitioner's request reassessed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that

> The Respondent's decision is **REVERSED** and it must initiate a reassessment of Petitioner's request.

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

DHHS Department Rep.

[redacted]

[redacted]

[redacted]

[redacted]