

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: July 22, 2020
MOAHR Docket No.: 20-000555
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on May 26, 2020. [REDACTED], Mother and Guardian, represented the Petitioner. Anthony Holston, Assistant Vice President Appeals and Grievances, represented the Respondent, Beacon Health Options on behalf of Network180. Alisha Krueger, Supports Coordination Supervisor, appeared as a witness for Respondent.

During the hearing proceeding, Respondent's Hearing Summary packet was admitted as Exhibit A, pp. 1-57.

ISSUE

Did Respondent properly reduce Community Living Supports (CLS) services for Petitioner through the IKUS Life Skills program?

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 an adult Medicaid beneficiary. (Exhibit A, p. 10)
2. Petitioner resides at [REDACTED], an Adult Foster Care (AFC) home. (Exhibit A, pp.10-23)

3. Petitioner receives services from Network180, the Community Mental Health Services Program (CMHSP) for Kent County, as directed in their contract with Lakeshore Regional Entity. (Exhibit A, p. 1)
4. On December 18, 2018, an Individual Plan of Service (IPOS) meeting was held as part of the person-centered planning (PCP) process. The IPOS for February 1, 2019, though January 31, 2020, was developed, which included CLS services at her AFC home and the IKUS Life Skills program. This was also indicated in Petitioner's Person Centered Plan of Care. (Exhibit A, pp. 10-15 and 24-47)
5. On September 16, 2019, Petitioner's IPOS was amended indicating Petitioner's supports coordination services were transferred from Pine Rest to Network180 effective September 16, 2019. (Exhibit A, pp. 16-23)
6. On January 8, 2019, an exception was requested for Petitioner to attend the Life Skills day program at IKUS while also receiving a daily level of care at Cameo Home AFC until her application for the Habilitation and Supports Waiver (HSW) is approved. (Exhibit A, pp. 7-8)
7. On February 1, 2019, the exception was not approved as requested. Instead, the CLS through IKUS Life Skills program was approved (in addition to the daily CLS at the AFC home) temporarily and on a fade out basis to give Petitioner time to adjust to the change. A schedule was approved of 5 days per week for February and March; 4 days per week for April and May; 3 days per week for June and July; 2 days per week for August and September; and 1 day per week for October and November. (Exhibit A, p. 8)
8. On February 11, 2019, a Notice of Action/Adverse Benefit Determination was issued to Petitioner indicating her CLS services at IKUS Life Skills Program, 5 days per week, would be faded out. Petitioner was authorized for 5 days per week for 2 months, then fade 1 day every 2 months. (Exhibit A, p. 2)
9. On or about February 11, 2019, Petitioner requested a Local Appeal contesting the determination. The request was given to Petitioner's Supports Coordinator. (Exhibit A, pp. 2-5 and 9)
10. Respondent is in agreement that Petitioner exhausted the Local Appeal process as her appeal was not timely forwarded to the Network180 appeal Department by the Supports Coordinator at that time. The request was not received by Network180 until late September 2019. However, the Local Appeal process was no longer administered by Network180 directly, but rather through Respondent. (Exhibit A, p. 9)
11. On January 30, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's signed request for hearing contesting the determination. (Hearing Request)

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 1396(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).

In this case, Petitioner had been receiving CLS daily at the AFC as well as five days per week attending the IKUS Life Skills program. With respect to CLS services, the Medicaid Provider Manual (MPM) provides in part:

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 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 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 MDHHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the MDHHS 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 MDHHS 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 MDHHS 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, January 1, 2019 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services
Pages 131-132*

While CLS is a covered service, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services. 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, January 1, 2019 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services
Pages 13-14*

The exception request explains that Petitioner had been attending a Skill Building program at IKUS. However, the Skill Building program is intended as a transitional program for individuals seeking employment. The IKUS staff reported that due to Petitioner's current ability level, it would be more appropriate for her to attend the IKUS Life Skills program to meet her needs in socialization, relationship building, assistance with preserving her health and safety, transportation, non-medical care, activities of daily living, meal preparation and community inclusion. As Petitioner already receives CLS at a low behavior rate at the AFC home, there was concern that she would not be able to attend the CLS based Life Skills program at IKUS. Petitioner's struggles with changes in her routine or environment were described. The exception was requested while Petitioner applied for the HSW, which would best accommodate her needs. (Exhibit A, pp. 7-8)

On February 1, 2019, the exception was not approved as requested. Instead, the CLS through IKUS Life Skills program was approved (in addition to the daily CLS at the AFC home) temporarily and on a fade out basis to give Petitioner time to adjust to the change. A schedule was approved of 5 days per week for February and March; 4 days per week for April and May; 3 days per week for June and July; 2 days per week for August and September; and 1 day per week for October and November. (Exhibit A, p. 8) Accordingly, on February 11, 2019, a Notice of Action/Adverse Benefit Determination was issued to Petitioner indicating her CLS services at IKUS Life Skills Program, 5 days per week, would be faded out. Petitioner was authorized for 5 days per week for 2 months, then fade 1 day every 2 months. (Exhibit A, p. 2)

Petitioner's mother noted that the AFC has not been providing all of the services Petitioner received at IKUS, such as getting Petitioner out into the community. It was

asserted that the AFC was not aware that they were responsible for this. Petitioner's mother also questioned where things were at regarding getting Petitioner approved for the HSW so that she would be able to attend a day program again. (Mother Testimony) Respondent noted that they had to send the packet several times to Petitioner's mother to get a signed copy back so that they could submit the HSW application for Petitioner. At the time of the hearing, the application had been submitted and Respondent was awaiting a determination. (Supports Coordinator Supervisor Testimony)

Given the evidence and applicable policies, in this case, Petitioner has not met her burden of proof regarding the CMH's determination to reduce her CLS services through the IKUS Life Skills program. As noted above, IKUS indicated that due to Petitioner's current skill level, it would be more appropriate for Petitioner to participate in their CLS based Life Skills program than to continue in their Skill Building program that is a transitional program for individuals seeking employment. There is no dispute that Petitioner has needs for CLS services. However, it would not be appropriate for Petitioner to be receiving CLS services from both the AFC home on a daily basis, and to attend a CLS based day program. As a provider of CLS services for Petitioner, the AFC home would also be able to work on meeting Petitioner's needs regarding socialization, relationship building, assistance with preserving her health and safety, transportation, non-medical care, activities of daily living, meal preparation and community inclusion. Petitioner's struggles with change were considered and a tapered, or fade out, authorization was approved. Accordingly, Respondent's February 11, 2019, determination to authorize CLS through IKUS Life Skills program (in addition to the daily CLS at the AFC home) temporarily and on a fade out basis is upheld.

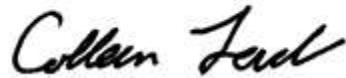
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly reduced CLS services for Petitioner through the IKUS Life Skills program based on the available information.

IT IS THEREFORE ORDERED that

The Respondent's decision is AFFIRMED.

CL/dh



Colleen Lack
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS Department Rep.

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DHHS-Location Contact

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