[redacted]
[redacted], MI [redacted]

Date Mailed: February 16, 2022
MOAHR Docket No.: 21-005694
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 January 18, 2022. [redacted], Petitioner's parents and legal guardians, appeared and testified on Petitioner's behalf. Anthony Holston, Assistant Vice-President of Grievance and Appeals at Beacon Health Options, represented the Respondent Lakeshore Regional Entity. Kate Ryder, Manager for the Utilization Management Team at Network 180; and Dr. Sydney Cohen, Physician Adviser at Beacon Health Options, testified as witnesses for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1, pages 1-9. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-465.

ISSUE

Did Respondent properly deny in part Petitioner's request for Community Living Support (CLS) services?

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 [redacted] year-old Medicaid beneficiary who, at various times, has been identified as having diagnoses of attention deficit hyperactivity disorder; generalized anxiety disorder; borderline personality disorder; oppositional defiant disorder; reactive attachment disorder; childhood emotional disorder; bipolar disorder; intermittent explosive disorder; obesity; asthma; and hearing loss. (Exhibit #1, page 8; Exhibit A, pages 11, 30, 32, 34, 41, 60, 68, 256, 284, 403, 423).

2. She also has a history of trauma; does not function at her age level; and experiences symptoms of mood lability, poor impulse control, and poor concentration. (Exhibit A, page 22).

3. Additionally, Petitioner is vulnerable and easily manipulated by others; she has a history of both physical and verbal aggression; and she will become emotionally dysregulated. (Exhibit A, pages 22, 25, 29).

4. She further has a lengthy history of impulsivity, which includes physical aggression, elopement, stealing, bullying and other high-risk behaviors such as substance use/abuse and unprotected sexual intercourse. (Exhibit A, page 254).

5. Petitioner's parents are her legal guardians, and she lives in an Adult Foster Care (AFC) home/specialized residential setting. (Exhibit #1, pages 6-7; Exhibit A, page 22).

6. Since July 5, 2019, and after being asked to leave two previous homes due to her behavior, Petitioner has lived at her current AFC home, which has a Tier 2 Specialized Residential Program that is different than an average AFC home. (Exhibit A, pages 25, 254; Testimony of Manager for the Utilization Management Team).

7. Due to her diagnoses and behaviors, Petitioner is also on multiple medications and has received services since she was a child, with consistent treatment since 2006. (Exhibit A, pages 22, 26, 35-36).

8. Currently, Petitioner has been authorized for Medicaid services through Respondent, a Prepaid Inpatient Health Plan (PIHP) and Network 180, one of Respondent's affiliated Community Mental Health Service Programs (CMHSPs). (Exhibit A, pages 11, 75).

9. Within Network 180, and since she aged out of the adolescent system, Petitioner's case has been handled by InterAct, Network 180's Assertive Community Treatment (ACT) team. (Exhibit A, pages 26, 75; Testimony of Manager for the Utilization Management Team).

10. With services, and while being on both a behavior plan and a CLS plan, Petitioner did well in her AFC home for the first nine months she was there, completing both her General Educational Development (GED) and a Dialectical Behavior Therapy (DBT) program and having targets of self-injury and physical aggression removed from her behavior plan. (Exhibit A, pages 26, 260, 401).

11. However, in November of 2020, Petitioner began exhibiting increased impulsivity, including running away from the AFC home and getting into a car with a stranger; increased outbursts; more difficulties in being redirected; increased depression and anxiety; and increased thoughts of

self-harm or suicidal ideation, with no specific plan. (Exhibit A, pages 32, 256, 401, 423, 425, 428).

12. From November 20, 2020 to November 25, 2020, Petitioner completed a voluntary five day stay at a crisis residential facility due to psychiatric symptoms and suicidal ideations. (Exhibit A, pages 256; 405-415, 423).

13. After her discharge, Petitioner ultimately returned to her AFC home, where she continued with behavior challenges. (Exhibit A, pages 256, 351-354, 389-390, 402).

14. The AFC had to provide additional staffing in the home because of Petitioner's unpredictability and care demands, and she was even given notice to move. (Exhibit A, pages 302, 401).

15. Respondent then assessed and approved Petitioner a different residential placement, though there were no appropriate openings at that time. (Exhibit A, page 256, 302,355-360).

16. Respondent also increased Petitioner's personal care and CLS services, with the increase originally set to expire December 31, 2020, before being extended to March 31, 2021. (Exhibit A, pages 302, 391-398).

17. With the increased services, Petitioner began doing better; her risky behaviors were stabilized; and any discharge from the AFC home was put on hold. (Exhibit A, pages 22-34, 60-61, 86, 256, 302-303, 346, 366-367, 383-386).

18. On March 1, 2021, Petitioner did elope from the AFC home again. (Exhibit A, pages 21, 32).

19. On March 8, 2021, Petitioner, her mother/guardian, the manager of the AFC home, and staff from InterAct met to complete Petitioner's Individual Plan of Service (IPOS). (Exhibit A, page 77).

20. The IPOS that was developed identified three goals for Petitioner: to manage her symptoms in crisis, work toward living independently, and master her behavior plan. (Exhibit A, pages 77, 80-103).

21. Both personal care and CLS services were to be authorized in support of those goals. (Exhibit A, pages 77, 89-103).

22. Petitioner's Case Manager also completed a CLS and Personal Care Needs Worksheet for April 1, 2021 through March 31, 2022, to be submitted along with the request for authorization of services. (Exhibit A, pages 341-347).

23. On March 26, 2021, Network 180 sent Petitioner a Notice of Adverse Benefit Determination providing that the duration of the reauthorization of her personal care and CLS services would be limited to the period of April 1, 2021 to June 30, 2021. (Exhibit A, pages 432-434).

24. With respect to the reason for the decision, the notice stated:

> Requests for continued authorization for these services were submitted for review as the authorizations in place are scheduled to expire 3/31/21. The requests were submitted for a duration of 4/1/21 – 3/31/22. As the expiring authorizations were at an enhanced level of care/rate due to a recent increase in the individual's needs, it was determined that it would be appropriate to continue with the enhanced level of care/rate, but for a limited duration in order to continue to frequently assess for ongoing need. These services will be reviewed again as the authorizations near expiration, in order to assess for the level of need, and reauthorization at a level of care/rate that will meet the needs of the individual.

Exhibit A, page 432

25. On April 1, 2021, Network 180 similarly sent Petitioner another Notice of Adverse Benefit stating that the requested treatment plan had been accepted, but with a limited authorization. (Exhibit A, pages 109-112)

26. Personal care and CLS authorizations were then approved for only April 1, 2021 through June 30, 2021. (Exhibit A, pages 338-340).

27. Over the next few months, Petitioner exhibited regression at times and some behavioral issues, but her overall behavior was better and progress was noted. (Exhibit A, pages 118-119, 128-129, 142, 145, 152, 265, 281, 302-303, 329-331).

28. On June 22, 2021, a Limited License Psychologist completed a Comprehensive Functional Assessment in which she found in part that Petitioner had made progress in various areas over the past year; her sleep cycles are good; and that she continues to benefit from a behavior treatment plan. (Exhibit A, pages 254, 257, 261).

29. In June of 2021, Petitioner's Behavior Treatment Plan was also revised, with findings that the current plan still addresses target behaviors of engaging in risky/dangerous behaviors, verbal aggression and food acquiring behaviors. (Exhibit A, page 246).

30. The plan further provided Petitioner should be supervised anytime male peers are present; staff should know her whereabouts when she is in the house and check on her at least every 30 minutes; and that Petitioner should be supervised whenever she leaves the house. (Exhibit A, page 247).

31. With the authorizations for Petitioner's personal care and CLS services set to expire on June 30, 2021, Petitioner's Case Manager completed a new Personal Care and CLS Worksheet for the dates of July 1, 2021 through March 31, 2022. (Exhibit A, pages 295-303).

32. That worksheet did not indicate any need for personal care assistance with the tasks of meal preparation, laundry, housekeeping, eating, toileting, bathing, grooming, dressing, transferring, ambulation, or assistance with self-administered medication. (Exhibit A, pages 296-297).

33. The worksheet did identify a need for and specific units to be authorized for CLS assistance with meal preparation (29 units a week); laundry care (14 units per week); cleaning/home care (14 units per week); Activities of Daily Living (ADLs) (28 units per week); shopping (13 units per week); money management (7 units per week); non-medical care (28 units per week); socialization and relationship building (8 units per week); leisure choice and relationship building (4 units per week); medical appointments (1 unit per week); medication management (14 units per week); health/safety in the community (4 units per week); and transportation (4 units per week). (Exhibit A, pages 298-303).

34. One unit equals 15 minutes and, overall, 168 units or 42 hours per week of CLS were to be approved. (Exhibit A, page 303; Testimony of Assistant Manager for Utilization Management).

35. Petitioner's Case Manager also stated in that worksheet that Petitioner had made slow and steady progress since the advent of the most recent CLS plan that included funding for additional staffing. (Exhibit A, pages 302-303).

36. On June 28, 2021, Petitioner's Case Manager similarly noted that, while Petitioner was currently at camp, he planned to connect with the AFC manager to review and update Petitioner's plan in light of the new CLS form and what the AFC home is doing for Petitioner, with most of what was completed in Petitioner's previous remaining appropriate. (Exhibit A, page 154).

37. On July 1, 2021, Petitioner's Treatment Plan was also amended to align her IPOS interventions with updated CLS. (Exhibit A, pages 156-169).

38. On July 15, 2021, a Limited Licensed Psychologist completed a Professional Treatment Monitoring in which she noted Petitioner's recent

progress and recommended that Petitioner continue with the current objectives. (Exhibit A, pages 284-285).

39. On August 17, 2021, Network 180 sent Petitioner's guardians a Notice of Adverse Benefit Determination stating that the request for 168 units of CLS had been denied and that only 91 units of CLS would be approved. (Exhibit A, pages 239-242).

40. Specifically, with respect to the action taken, the notice stated:

> The service(s) you requested were: Denied.
>
> H2016 – Comprehensive Community Supports Services; per Diem
>
> Approved for 91 of the 168 CLS units requested. Units were adjusted in the areas Meal Prep, Laundry, Cleaning/Homecare, ADL's, Shopping, Money Mgmt, Non-Medical, Med Mgmt and Transportation as the support described in documentation does not match the higher number of units requested. Many of these areas (shopping, money mgmt., and non-medical care) were also duplication of supports described.
> Units approved in areas as follows: Meal Prep (8), Laundry (8), Cleaning/Homecare (8) ADL's (7), Shopping (6), Money Management (4), Non-Medical Care (28), Socialization (8), Community (2), Medical Appointments (1), Medication Mgmt (5), Health/Safety (4), Transportation (2).
>
> *Exhibit A, page 239*

41. The reason given for the decision was that the "clinical documentation provided does not establish medical necessity." (Exhibit A, page 239).

42. On October 27, 2021, Petitioner's guardians filed an Internal Appeal with respect to that Notice of Adverse Benefit Determination. (Exhibit A, pages 4-10).

43. With respect to the reason they were requesting an appeal, the Internal Appeal stated:

> Drastic drop in CLS units from 168 to 91. [Petitioner] has a behavioral plan that is intensive. She has to be checked on every 30 minutes and needs to be supervised in public for her safety. She has had one on one staffing that have assisted with keeping her busy and out of trouble. She has hearing aids & glasses that have to be checked in and out. She takes medication at 5 different times and also has prescription nasal spray & toothpaste. Has to be monitored to make sure she brushes her teeth – 15 cavities to date since 18 yrs old and also needs monitored to make sure she showers, washes her hair and washes and washes her face. Doesn't wear appropriate clothing for the weather unless guided to do so. If unattended she will take food, drink and borrow or lend items which is not allowed per her behavioral plan. She cannot manage money. She cannot read her mail and understand what it means. She is a lot of work. Would have to be in behavioral home if covid hadn't happened. Is a flight risk. Functions at 12/13 year old level. Was behavioral plan taken in account. It was missed before and I had to call a meeting. Wonder if that is part of the issue again.

Exhibit A, page 3

44. Respondent then forwarded that Internal Appeal and records regarding Petitioner to Beacon Health Options for a Peer Advisor Review. (Exhibit A, pages 11-12, 435-437).

45. During that review, the doctor noted:

> Parents/guardians are appealing Network 180's decision to reduce the hours of CLS services from 168 to 91 per week. Guardian notes that mbr has to be checked on every 30 minutes and supervised in public. Also noted by guardians to function at 12/13 yo level. Denial indicates: Documentation doesn't support the request of 168 units and many of

the areas (shopping, money mgmt., and non medical care) were also duplication of supports described. 68 units approved for meal prep (8), laundry(8), cleaning/homecare(8), ADL's(7), Shopping(6), Money Management(4), Non Medical Care (28), Socialization(8), Community(2), Meidcal Appointents [sic] (1), Med Mgt(5), Health/safety(4), and Transportation(2).

* * *

med rec LI vendor app rev. 24 yo f. dxs: adhd, combo type; borderline pers d/o. receiving CLS services. this rev is an appeal of decision starting 8/17/21 to deny req for 168hrs/wk CLS and approve 91/hrs/wk. guardian appeal notes that mbr has to be checked q30 min; needs constant supervis in public d/t having behav/emot fnctng of a 12-13 yo. sx of concern include mood lability, poor impulse control, poor concentration. mbr has a hx of trauma and has received mh services as a child. documentation provided doesn't support req for 168hr/wk CLS. many areas of req services (e.g. shopping, money mgmt, non medical care) are duplications of serv provided. MI DHHS Medicaid Manual LRE 4.1.H. CLS Supports-pg. 1137 criteria not met. denial upheld for additonal CLS services. stmnt: You are a 24 year old female requesting 168 hours/week of Community Living Support (CLS) services starting 8/17/21. You have been authorized for 91 hours/week CLS services starting 8/17/21. You have problems with impulse control and in maintaining concentration and a stable mood. A significant number of the hours requested represent a duplication of services. On 8/17/21 the request for 168 hours/week of CLS services cannot be validated as medically necessary. On 8/17/21 your care can be safely addressed with 91 hours a week of CLS services. sydney cohen md 11/11/21@4:05pm/et.

46. On November 16, 2021, Respondent sent a Notice of Internal Appeal Denial stating that the Internal Appeal had been denied. (Exhibit A, pages 439-453).

47. With respect to the reason for the decision, the notice stated:

> We denied your appeal for the service/item listed above because: You are a 24-year-old female for whom 168 hours of community living supports (CLS) was requested on 08/17/2021. You were previously authorized for 91 hours per week of CLS starting 8/17/2021. You had varying moods. You had difficulty with impulse control. You also had difficulty concentrating. A significant number of the hours requested represent a duplication of services. CLS helped you with shopping, money management, and non-medical care. Documentation provided did not support the need for the number of hours requested. On 08/17/2021, 168 hours per week was not medically necessary. Your care could be treated with 91 hours per week of CLS.

Exhibit A, page 439

48. On December 3, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that decision. (Exhibit #1, pages 1-9).

49. In that request for hearing Petitioner's guardians asserted that the requested personal care and CLS services are medically necessary. (Exhibit #1, pages 1-9).

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, Petitioner requested Community Living Supports (CLS) and, with respect to such services, the applicable version of the Medicaid Provider Manual (MPM) states:

> **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 children and youth 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.

While CLS services are covered services, 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, July 1, 2021 version
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
Pages 14-16

Moreover, in addition to medical necessity, the MPM also identifies other criteria for B3 supports and services such as CLS:

> **SECTION 17 – ADDITIONAL MENTAL HEALTH SERVICES (B3s)**
>
> PIHPs must make certain Medicaid-funded mental health supports and services available, in addition to the Medicaid State Plan Specialty Supports and Services or Habilitation Waiver Services, through the authority of 1915(b)(3) of the Social Security Act (hereafter referred to as B3s). The intent of B3 supports and services is to fund medically necessary supports and services that promote community inclusion and participation, independence, and/or productivity when identified in the individual plan of service as one or more goals developed during person-centered planning. NOTE: Certain services found in this section are State Plan EPSDT services when delivered to children birth-21 years, which include community living supports, family support and training (Parent-to-Parent/Parent Support Partner) peer-delivered services, prevention/direct models of parent education and services for children of adults with mental illness, skill building, supports coordination, and supported employment.
>
> **17.1 DEFINITIONS OF GOALS THAT MEET THE INTENTS AND PURPOSE OF B3 SUPPORTS AND SERVICES**
>
> The goals (listed below) and their operational definitions will vary according to the individual's needs and desires. However, goals that are inconsistent with least restrictive environment (i.e., most integrated home, work, community that meet the individual's needs and desires) and individual choice and control cannot be supported by B3 supports and services unless there is documentation that health and safety would otherwise be jeopardized; or that such least restrictive arrangements or choice and control opportunities have been demonstrated to be unsuccessful for that individual. Care should be taken to insure that these goals are those of the individual first, not those of a parent,

guardian, provider, therapist, or case manager, no matter how well intentioned. The services in the plan, whether B3 supports and services alone, or in combination with state plan or Habilitation Supports Waiver services, must reasonably be expected to achieve the goals and intended outcomes identified. The configuration of supports and services should assist the individual to attain outcomes that are typical in his community; and without such services and supports, would be impossible to attain.

Community Inclusion and Participation	The individual uses community services and participates in community activities in the same manner as the typical community citizen. Examples are recreation (parks, movies, concerts, sporting events, arts classes, etc.), shopping, socialization (visiting friends, attending club meetings, dining out) and civic (volunteering, voting, attending governmental meetings, etc.) activities. A beneficiary's use of, and participation in, community activities are expected to be integrated with that of the typical citizen's (e.g., the beneficiary would attend an "integrated" yoga class at the community center rather than a special yoga class for persons with intellectual disability).
Independence	"Freedom from another's influence, control and determination." (Webster's New World College Dictionary, 1996). Independence in the B3 context means how the individual defines the extent

	of such freedom for him/herself during person-centered planning. For example, to some beneficiaries, "freedom" could be living on their own, controlling their own budget, choosing an apartment as well as the persons who will live there with them, or getting around the community on their own. To others, "freedom" could be control over what and when to eat, what and when to watch television, when and how to bathe, or when to go to bed and arise. For children under 18 years old, independence may mean the support given by parents and others to help children achieve the skills they need to be successful in school, enter adulthood and live independently.
Productivity	Engaged in activities that result in or lead to maintenance of or increased self-sufficiency. Those activities are typically going to school and work. The operational definition of productivity for an individual may be influenced by age-appropriateness. For example, a person who is 76 years old may choose to volunteer or participate in other community or senior center activities rather than have any productivity goals. For children under the age of five years, productivity

	may be successful participation in home, pre-school, or child care activities. Children under 18 would be expected to attend school, but may choose to work in addition. In order to use B3 supports and services, individuals would be expected to prepare for, or go to, school or work in the same places that the typical citizen uses.

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and
- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and
- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and
- Additional criteria indicated in certain B3 service definitions, as applicable.

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. MDHHS 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.
>
> Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.
>
> *MPM, July 1, 2021 version*
> *Behavioral Health and Intellectual and*
> *Developmental Disability Supports and Services Chapter*
> *Pages 132-133*

Here, as discussed above, while Petitioner requested 168 units per week of Community Living Supports (CLS), Respondent denied that request and only approved 91 units of such services per week.

In support of that decision, the Manager for the Utilization Management Team at Network 180 testified that she reviewed the request for CLS in that case and determined that only 91 out of the requested 168 units should be approved. In making that determination, she noted that the amount requested was atypical and that much of the requested assistance with different activities overlapped with each other. She also testified regarding the units requested for each activity, what they were requested for, what services were duplicative of other services, and what was ultimately approved.

The Manager for the Utilization Management Team further testified that, whatever services had been approved previously, each new request is reviewed independently. She could not explain why only CLS was requested here, when Petitioner had previously been receiving a combination of personal care and CLS but thought the process might have changed and noted that they are different services that serve different purposes. She did agree that Petitioner lives in a specialized residential program and that she has a behavioral plan.

The Physician Adviser at Beacon Health Options testified that he was the physician who reviewed the Internal Appeal in this case and explained the reasons for his decision. Specifically, he testified that a decrease in CLS was proper based on the information he received, and the excessive or duplicative services requested. However, he could not cite to any specific examples of excessive or duplicative services that were requested. He did testify that he is aware of Petitioner's diagnoses and behavioral plan, and that they alone are insufficient to warrant the requested services.

In response, Petitioner's mother/guardian testified that Petitioner's plan was reviewed in April of 2021 and CLS was approved, only for her to find out from Petitioner's Case Manager in September that there had been a subsequent denial. However, she also later testified that she did not realize the earlier approval was only through June as the approvals were usually for a year. She similarly testified that she has had difficulties getting documentation and information from Respondent.

Petitioner's mother/guardian further testified that Respondent missed Petitioner's extensive behavioral plan during past assessments, which lead to fewer services being approved, and that she believes the same thing may have happened here. She also testified that some of the verbiage of Petitioner's CLS needs to be changed to make clear there is no duplication and that she has learned that she must be involved in everything that is written out, especially given that even Petitioner's diagnoses have been misidentified at times.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information Respondent had at the time it made that decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and that Respondent's decision must therefore be affirmed.

Petitioner is authorized for a significant amount of CLS, and the authorized units appear to be sufficient to meet the specific goals and objectives identified in her plan, especially given that the initial reviewer, the Manager for the Utilization Management Team, credibly and fully explained how there was an improper duplication of services across the requested supports. Additionally, while Petitioner's guardian suggested that the duplication was just a matter of improper verbiage, the record fails to support that contention and, regardless, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information it has at the time, including the verbiage submitted as part of the request.

Moreover, while Petitioner was previously approved for more services and continues to have a behavior plan, those facts alone do not warrant that the requested units be approved now, especially given that the record reflects that the increased services were only being approved temporarily in response to Petitioner's behaviors at the time, which

have since improved, and the improper duplication of services among the previously approved assistance.

To the extent Petitioner's circumstances have changed or her guardian has additional or updated information to provide, then Petitioner's guardian can always request additional services in the future along with that information. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that

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

Steven Kibit

SK/tem

Steven Kibit
Administrative Law Judge

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

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Authorized Hearing Rep.

[redacted], MI [redacted]

Petitioner

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