GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[redacted]

Date Mailed: March 26, 2024
MOAHR Docket No.: 24-001568
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on March 19, 2024. [redacted] Petitioner, appeared on her own behalf. Pam Fachting, Fair Hearing Officer, appeared on behalf of Respondent, Gratiot Integrated Health Network (Department). Sarah Bowman, Clinical Director, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did Department properly deny Petitioner's request for Community Living Supports (CLS) and a fiscal intermediary?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of January 19, 2023, Petitioner was approved for and receiving services from the Department. (Exhibit A; Testimony.)

2. On January 19, 2023, Petitioner underwent a LOCUS assessment and scored an 18. (Exhibit A.)

3. On October 31, 2023, Petitioner requested 30 hours of Community Living Supports a week and 1 hour a week for a fiscal intermediary. (Exhibit A; Testimony.)

4. On November 7, 2023, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated the Department attempted to obtain additional information regarding Petitioner's request and further indicated the goals identified in the PCP were not medically necessary for the level of CLS services being requested. The notice further indicated the Petitioner would benefit from peer support services as well as continuation of outpatient therapy. (Exhibit A.)

5. On December 15, 2023, the Department sent Petitioner a Notice of Appeal Denial. The notice indicated the Department was denying Petitioner's request for benefits. The notice indicated:

> Individual's current LOCUS score of 18 and current level of functioning does not demonstrate medical necessity for the requested 30 hours per week of CLS services. [redacted] is requesting reminders for scheduling and attending doctor's appointments, reminders to take medications and to shower, as well as "wanting someone to push her to go out…wants a companion". Given her diagnosis of Post Traumatic Stress Disorder and Dissociative Identity Disorder, the most appropriate treatment to improve her functioning is therapy, psychiatric services, case management, and peer support services. A small amount of CLS is medically necessary, 3-5 hours a week, up to 3 months to provide transitionary (not long term) support for [redacted] to set up her own reminders using natural supports and use of available technology (such as alerts on phones) to increase her level of independence in the areas she identified as needs. Please not that her request of a CLS worker to provider "verbal prompting to not spend all her money" is not an appropriate task for a CLS worker. [redacted] is legally responsible for her own finances and it would be inappropriate for a CLS worker to influence how she chooses to spend her money. [redacted] states that she does pay her bills, which demonstrates she has the ability to do engage in basic financial planning and related skills. Her case manager or therapist can further explore with her the impact her financial choices have for her and her family. [redacted] reported she was never taught how to complete household chores. This does not align with raising two

children, and working as a caregiver – there is no evidence in the clinical documentation that she has been unable to meet the basic needs of her household or of the clients she served. The brief use of CLS (3-5 hours a week for up to three months) could address a cleaning schedule (which should also include what role her husband and sons play in this life domain) and/or help [redacted] find you tube tutorials on specific chores she'd like to learn more about. There are multiple other potential supports that could be put in place for medication management such as specialized packaging from the pharmacy, a med box, reminders from natural supports, or use of available technology (alert on phone) to provide reminders to take medication.

[redacted] reports that she has always "taken care of everyone else". This statement, in addition to [redacted] employment history as a caregiver for others (she quit her job in August 2023 per progress note dated 8/11/23), role of caregiver for her two children (one is now an adult, the other is a teenager), and her academic accomplishments (Associates Degree in Science), provide evidence that [redacted] has many strengths and abilities. A review of the clinical documentation in her chart shows that [redacted] has the ability to manage her basic life skills, so much so that she has helped others to learn and master these skills. The clinical documentation shows that [redacted] primary impairments are due to how her past trauma continues to interfere with her mood and functioning, thus therapy will be the most appropriate intervention to improve her functioning and quality of life. Providing the requested 30 hours of CLS per week would likely have the opposite effect and promote dependency on others to meet her basic needs and interfere with her recovery.

Should [redacted] opt to utilize a self determination arrangement for the short-term CLS, involvement of a Fiscal Intermediary (FI) will be required but should not exceed 4 months.[1]

6. On January 19, 2024, Petitioner participated in a person-centered planning meeting, wherein Petitioner indicated an approval of 3 months of up to 5 hours per week of CLS was not worth it and declined to move forward. (Exhibit A; Testimony.)

[1] Exhibit A, pp 69-70.

7. On February 20, 2024, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

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.[2]
>
> 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.[3]

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

[2] 42 CFR 430.0.
[3] 42 CFR 430.10.

> services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State…[4]

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 is seeking CLS services and a fiscal intermediary. With respect to the requested services, the applicable version of the Medicaid Provider Manual (MPM) provides in part:

> **17.4.A. COMMUNITY LIVING SUPPORTS**
>
> NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years.
>
> Community Living Supports (CLS) are used to increase or maintain personal self-sufficiency, facilitating a beneficiary/s achievement of their 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)

[4] 42 USC 1396n(b).

- shopping for food and other necessities of daily living

CLS services may not supplant services otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973 or state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (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.

- CLS staff providing 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.[5]

While CLS is a covered service, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services.[6] Regarding medical necessity, the MPM also provides:

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[5] Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services, January 1, 2024, pp 150-151.
[6] *See* 42 CFR 440.230.

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.[7]

Here, Petitioner requested CLS and a fiscal intermediary. However, the documentation provided did not reflect the medical necessity requirements for the allocation the Petitioner was seeking.

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

[7] *Id*, at pp14-15.

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 the Department's decision must, therefore, be affirmed.

The records provided do not show the requested services as being medically necessary. And although Petitioner claims there are records missing, Petitioner did not provide any additional records of her own to complete the record, nor did Petitioner identify the specific documents that were alleged to be missing. Moreover, the fact the Petitioner denied the services that were offered is evidence the Petitioner is not really in need of the additional services being requested.

Consequently, with respect to the decision at issue in this case, the Department'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 the Department properly denied Petitioner's request for CLS and a fiscal intermediary.

IT IS THEREFORE ORDERED that:

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

CA/pe

Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, 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

Via Electronic Mail:

DHHS Department Contacts

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[redacted]