

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[REDACTED]

Appellant

\_\_\_\_\_ /

Docket No. 2009-10958 EDW

Case No. [REDACTED]

Load No. [REDACTED]

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED] appeared as Authorized Representative for [REDACTED] (Appellant).

[REDACTED], appeared on behalf of [REDACTED], an agency contracted with the Department of Community Health to provide MI Choice Wavier Services (hereafter, 'Department'). Also appearing on behalf of the Department were [REDACTED].

**ISSUE**

Did the Department properly deny the Appellant's request for 30 hours per week of Community Living Supports?

**FINDINGS OF FACT**

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. Appellant is a Medicaid beneficiary, and has been enrolled in the MI Choice Waiver program since ██████████. Current waiver services include an emergency button, lift chair, Registered Nursing services for one (1) hour every other week, 2 ½ hours per week of homemaker services, 2 ½ hours per week of personal care services, and community living supports of 16 hours per week. The Appellant's daughter, ██████████, is her paid care giver for these services.
2. Following a ██████████, re-assessment of her needs, the Appellant's daughter requested an increase of 14 hours per week of community living supports.
3. On ██████████, the requested increase was denied. ██████████ provided the Appellant written notice of the denial. (*Exhibit 1; p. 2*)
4. The ██████████, re-assessment reveals the following findings (with abbreviations omitted):

*"REA completed with client by ██████████ and ██████████. See pick for complete details. Client's daughter, ██████████, also in attendance. Client was sitting in her lift chair with a blanket on her lap and a heating pad to her left shoulder. Client acknowledges increased discomfort in her left shoulder over the past several weeks. Client continues to have injections to her eye due to macular degeneration. Client is able to feed self although she needs caregiver to assist with putting meds in applesauce due to vision difficulties. Client continues to be able to assist with dressing including assisting in putting on her own long underwear, top and bottom. Client denies increased shortness of breath since last re-assessment, and cannot remember when she last used oxygen at night. Client was able to get herself out of her lift chair and, using her walker, walk across the living (room) to the kitchen and back to her chair and return to a sitting position in her lift chair. Client acknowledges she is slightly slower in some areas of ADLs and IADS' due to shoulder pain but, overall, is doing fairly well. Client expresses satisfaction with quality of services and wishes to continue. Client and caregiver deny medication changes at this time. Caregiver is requesting increased CLS hours, from current 21 hours/week to 35 hours/week, as she feels it is taking her longer to give her mother a bath and personal care. ██████████ completed task sheet which she shared with care manager-see copy in home file. Care manager informed ██████████ this information will be shared with supervisors*

*and discussed with secondary care manager and then care manager will contact her regarding the answer to this request. Client continues to be eligible for waiver services under LOCD#1. Care plan shared with client and caregiver, and caregiver signed in agreement.”*

*(Exhibit 1; p. 5)*

5. On [REDACTED] the Appellant filed her request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

### **CONCLUSIONS OF LAW**

The Medical Assistance Program 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.

This Appellant is claiming services through the Department’s Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case [REDACTED], function as the Department’s administrative waiver agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440, and subpart G of part 441 of this chapter. *42 CFR 430.25(b)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as “medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

Home and community-based services under section 1915(c) exist for a period of three years initially, and may be renewed thereafter for periods of five years. *42 CFR 430.25(h)(2)(i)*

CMS [Centers for Medicare and Medicaid Services] may grant a State an extension of its existing waiver for up to 90 days to permit the State to document more fully the satisfaction of statutory and regulatory requirements needed to approve a new waiver request. CMS will consider this option when it requests additional information on a new waiver request submitted by a State to extend its existing waiver or when CMS disapproves a State's request for extension. *42 CFR 441.304(c)*

1915 (c) (42 USC 1396n (c)) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. *42 CFR 430.25(b)*

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. *42 CFR 440.180(a)*

Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by HCFA as cost effective and necessary to avoid institutionalization. *42 CFR 440.180(b)*

### **Determination of personal care services**

The MI Choice waiver defines Personal Care as follows:

"Assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may also include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . ."

*(MI Choice Waiver, Updated September 2002; Appendix B, pages B1 and B2)*

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice Waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

The Operating Standards applicable to the MI Choice Waiver Program require Waiver Agents to develop written policies and procedures compatible with the “General Operating Standards for Waiver Agents and Their Contracted Service Providers.”

**Increase in homemaking services**

The MI Choice waiver defines Homemaking as follows:

“General household activities (meal preparation and routine household care) provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home . . . .”

*(MI Choice Waiver, Updated September 2002; Appendix B, page B1)*

The Appellant’s daughter testified about how much time it takes to care for the Appellant on a daily basis, and that she frequently is required to assist the Appellant with taking enemas. The Appellant’s daughter also testified the Appellant has frequent incontinence-related incidents a regular basis. She presented no further evidence as to why she believes an additional 14 hours of community living supports are needed.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide the Department has appropriately denied the Appellant’s request for an increase from 16 hours per week of CLS to 30 hours per week of CLS.

**IT IS THEREFORE ORDERED** that:

The Department’s decision is AFFIRMED.

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Stephen B. Goldstein  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc: [REDACTED]

[REDACTED]  
Docket No. 2009-10958 EDW  
Decision and Order



Date Mailed: 3/19/2009

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.



