

**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:**

**Docket No. 2009-14935 EDW**

██████████,

**Appellant**

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**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ was present and did testify. ██████████, the Appellant's brother was present and represented the Appellant at hearing. ██████████ for the Waiver agency was present and represented the Department contracted agency. ██████████ was present as a Department witness. ██████████, ██████████, was present as a Department witness.

**ISSUE**

Did the Waiver Agency properly propose a reduction in service hours?

**FINDINGS OF FACT**

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

1. The Appellant is a Medicaid beneficiary enrolled in the MI Choice Waiver program.
2. The Appellant is a ██████ year-old woman with Spina-bifida. She is bed-ridden and requires extensive personal care.
3. The Appellant's brother resides with her and has recently incurred loss of employment.
4. The Waiver Agency learned of the Appellant's brother's employment situation and proposed to reduce services authorized for the Appellant, asserting her brother could provide household chores due to his availability.

██████████  
**Docket No. 2009-14935 EDW**  
**Decision and Order**

5. On ██████████, the Department sent the Appellant a Notice stating that her authorized respite services would be reduced from 6 hours per day to 5 hours per day.
6. On ██████████, the Department received the Appellant's request for an Administrative Hearing.

**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 the Waiver Agency, function as the Department's administrative 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)*

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.

**Docket No. 2009-14935 EDW**  
**Decision and Order**

- 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)*

There is no dispute that the Appellant's personal care and homemaking services are medically necessary. In her request for hearing the Appellant states her personal care requires 6 hours per day of services. Additionally, she states her brother is not at her home full time, rather he is seeking employment, thus absent frequently. The uncontested testimony provided by both the Appellant and her brother is that he is absent frequently due to his employment search as well as attempting to reunify with his wife. Additionally, he stated the services provided the Appellant through the waiver agency are all personal care. He stated he already does all the cleaning in her bedroom, prepares meals and cleans up. He stated the aides who come in are not cleaning her bedroom and there is no cut to be made.

The agency witnesses stated they do not expect the Appellant's brother to provide the personal care because he is available; rather, only that he take up some of the housekeeping duties. They did not have evidence of which housekeeping chores the paid providers were performing on behalf of the Appellant that her brother could do. While it would appear reasonable for other available members of a shared household to provide housekeeping chores, in this case there was no specific testimony contradicting the testimony from the Appellant and her brother that the aides are only providing personal care when they come. A proposed cut in services would result in less personal care being provided, not a reduction in household chores. The Department witnesses were unable to effectively refute the material evidence from the Appellant on this issue. Additionally, no policy was introduced into evidence supporting the proposed cut and reason for it.

The Waiver Agency did not provide sufficient evidence that its reduction was proper and in accordance with federal and state policy.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency improperly reduced the Appellant's MI Choice Waiver services.

**IT IS THEREFORE ORDERED** that:

The Department's decision is REVERSED.

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Jennifer Isiogu  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

**Docket No. 2009-14935 EDW**  
**Decision and Order**

cc:



Date Mailed: 5/11/2009

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

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.