

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

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IN THE MATTER OF:

Docket No. 2009-33646 EDW
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge 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 [REDACTED]. [REDACTED] (Appellant) appeared and testified. [REDACTED], the Waiver Program Director, represented the Department's Waiver Agency, HHS, [REDACTED]. [REDACTED], testified as a witness for the Department/Waiver Agency.

ISSUE

Did the Waiver Agency properly determine the Appellant's MI Choice Waiver services eligibility?

FINDINGS OF FACT

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

1. Appellant is a [REDACTED] Medicaid beneficiary enrolled in the MI Choice Waiver program.
2. Appellant has a medical history of arthritis, osteoporosis, depression, renal failure, and diabetes mellitus. (Exhibit 1, p. 17)
3. Appellant was approved for [REDACTED] per day, of MI Choice Waiver Services.
4. In [REDACTED], Appellant request an additional [REDACTED] per day of MI Choice Waiver services.

5. Appellant needs assistance with ambulation and repositioning. (Exhibit 1)
6. Appellant is independent in: bed mobility; using a telephone, and she has an emergency response system in place; and medications after set up. (Exhibit 1)
7. Daily Logs show that Appellant receives the assistance with the following on a daily basis:

9-10 A.M.

- Assisting with bedpan
- Assist with pericare, fresh, clean pads/linens
- Assist with skin care
- Ambulation and transfer
- Reassessing with proper body positioning
- Clean Water Bottle
- Fresh ice and water

10-11 A.M.

- Breakfast, juice, make prepare and cleanup
- Remind medication (AM)

11-11:30 A.M.

- Nebulizer treatment
- Fill and clean 1x weekly by pap machine
- Clean filter on the bed 1x weekly

11:30-12:30 P.M.

- Assisting with prescribed physical therapy and exercises recommended by RN's and Physicians

12:30-1:00 P.M. Light Houskeeping

- Dishes
- Dusting

- Vacuuming
- Bathroom
- Shower
- Toilet
- Floor cleaning as needed

1:00-1:30 P.M.

- Prepare setup lunch/cleanup

1:30-2:00 P.M.

- Nebulizer treatment
- Assist with bed pan, pericare

2:00-3:00 P.M.

- Ambulation, repositioning body
- Prepare and lay out advance meals for PM and next day AM
- Get/clean fresh ice and water
- Assist with bed pan if needed, give fruit or vegetable for snack before leaving
- Turn on machine for nap and take out trash

9:00-10:00 P.M.

- Assist with bed pan and pericare
- Put night cream on (client) and clean pads
- Close drapes and Get ice water for the night
- Fill by pap machine for the night
- Take out trash in the bathroom
- Assist with giving (client) a night snack as needed
- Lock door before leaving for the night (Exhibit 1. pp. 3 & 4)

8. On ██████████, the Department notified Appellant that her request for a 1 hour per day increase in services was denied.
9. On ██████████, the State Office of Administrative Hearings and Rules received Appellant's request for an Administrative Hearing, protesting the denial of her request for an increase in MI Choice Waiver Services.

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

This Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MIChoice 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.
- 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.

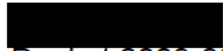
Other services requested by the agency and approved by HCFA as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(b)

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 issue appealed is whether the Waiver Agency properly determined that Appellant was not eligible for an increase in services hours. Appellant has been ██████████ per week, ██████████ of MI Choice Waiver services. Appellant testified that she needs the additional hour in services because she is a diabetic and needs to eat during the period of 5-6 p.m. Appellant testified that she needs someone to heat up her food during that time, and she needs help getting on the bed pan during that time.

According to the Waiver Agency, Appellant is receiving adequate services to meet her needs. The Waiver Agency suggested that there be a rearrangement in the time that services are being provided in order to meet Appellant's needs in the evening or during the time of 5-6 p.m. For example, instead of services being provided from 9 a.m. to 3 p.m., services could be provided from 9 a.m. to 2 p.m., 5-6 p.m., and 9-10 p.m.

In this case, Appellant failed to meet her burden of establishing that it is medically necessary for her to receive an additional hour of MI Choice Waiver Services. The MI Choice Waiver Agency established that it has identified Appellant's personal care needs and provided her with adequate services hours to meet them. There's no evidence on the record to establish that the Waiver Agency's assessment of Appellant's eligibility for services was not completed in accordance with the applicable law and policy.


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Therefore, the MI Choice Waiver Agency's decision must be upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Marya Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



***** NOTICE *****

The State Office of Administrative Hearing 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 Hearing 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 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.

Date Mailed: 10/27/2009