

**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. 2009-14469 EDW**

██████████,

**Appellant**

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, represented the Department's waiver agency

**ISSUE**

Did the Department properly establish services hours for the Appellant under the MI Choice waiver program?

**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 ██████-year-old, disabled, Medicaid beneficiary.
2. He is afflicted with DM, and low vision. He is a "bilateral amputee." (Appellant's Exhibit #1)
3. The Appellant sought reinstatement of waiver program homemaking services at 6 hours per day – instead of 4.5 hours per day as established on an in-home review of his medical needs. (Department's Exhibit A, pp. 2, 3 and Appellant's Exhibit #1)
4. The Appellant was reassessed and found to be independent in his ability to check his blood sugar and administer his insulin. (Department's Exhibit A, pp. 2, 3)

5. The Appellant was advised of the reduction on ██████████. (Department's Exhibit A, p. 2)
6. The instant request for hearing was received by SOAHR on ██████████. (Appellant's Exhibit #1)

### **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 appeals a reduction of his homemaker hours through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). This 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 enterprises, such as ██████████, 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)].

Furthermore, the Medicaid Provider Manual, MPM, sets forth eligibility and review standards under its regulations:

## ELIGIBLE BENEFICIARIES

The MI Choice Waiver provides services to aged and physically disabled individuals 18 years old and over who are U.S. citizens, who want to stay in their homes or another residential setting, but without the provision of waiver services, would require the level of care only available in a nursing facility. Income and assets requirements and restrictions apply. Individuals must be currently Medicaid approved or be Medicaid eligible if they were to enter a nursing facility. MDCH contracts with local agencies to administer this program.

## COVERED SERVICES

In addition to regular Medicaid coverage, enrollees receive waiver services that include:

- Adult day care
- Chore services
- Counseling
- Environmental modifications
- Home delivered meals
- Homemaker services
- Medical supplies and durable medical equipment beyond those covered by regular Medicaid
- Personal care supervision
- Personal emergency response systems
- Private duty nursing (if age 21 or older)
- Respite
- Training in a variety of independent living skills
- Transportation (Emphasis supplied)

MPM, Section 4.1 *et seq*, Special Programs,  
January 1, 2009, page 7.

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At hearing the Appellant explained that the ██████ assessment was wrong, in part, because he is going blind, has uncontrolled diabetes and has a tendency to fall. The Appellant testified that he is concerned with his ability to properly utilize his audible insulin pen and glucometer.

The Agency witness (██████████) testified that the Appellant was trained in the use of his adaptive equipment and found to be proficient in its safe use. He added that the Appellant was assessed by his (2) two case managers, an RN and social worker, who confirmed his competencies in writing following his in-home assessment. See Department's Exhibit A, at page 3.

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The Appellant's concern regarding upcoming carpal tunnel surgery was addressed by the Waiver Agency witness who explained that future need based adjustments are anticipated by the program – so long as based on medical need.

On review, the evidence and testimony established that at the time of his assessment the Appellant was determined to be both competent and capable of operating his special needs DM monitoring equipment and large print BS logs.

To the extent the Appellant anticipates a change in condition or has experienced a changed in condition - reassessment of his medical needs remains available. I found the decision to reduce the original homemaker service hours to be properly determined when made.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that MI Choice waiver agency properly reassessed homemaker hours to the Appellant.

**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**

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Dale Malewska  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc:



Date Mailed: 4/23/2009

**\*\*\* 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 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.