

**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. 2010-15631 EDW**

██████████

**Appellant**

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**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 ██████████ ██████████ represented the Appellant. She had no witnesses. ██████████, clinical services manager, represented the Department's waiver agency. Her witness was ██████████ ██████████ RN manager.

**ISSUE**

Did the ██████████ properly reduce personal care hours for the Appellant?

**FINDINGS OF FACT**

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

- 1) At the time of hearing the Appellant is an ██████████ old, disabled, Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with DM, dementia, CVA, CHF and she participates in dialysis three times a week. (See Department's Exhibit A – throughout)
- 3) The Department witnesses stipulate that the Appellant is "total care." (See Testimony)
- 4) The Appellant received self determination (SD) waiver services from the agency as of ██████████. She has assigned her daughter ██████████ to act as her representative. (Department's Exhibit B – throughout and Appellant's Exhibit #2, pp. 10-11)

- 5) On or about ██████████, the Department agreed to temporarily raise the amount of personal care for the Appellant to 72-hours with the understanding that it would revert to 40-hours a week upon the representative's ██████████) return to ██████████.<sup>1</sup> (Department's Exhibit A, p. 26)
- 6) The Appellant's representative agreed to the deal by way of a ██████████ revised plan of care executed by her and AAA RN, ██████████ (Department's Exhibit A, p. 4)
- 7) At hearing the Appellant's representative asserts that she is overwhelmed with personal care duties and that the Appellant [as of ██████████] requires maintenance of 72 hours of personal care owing to a change in condition. (See Testimony of Appellant's representative, Appellant's Exhibit #1 and Appellant's Exhibit #2, pp. 3, 4)
- 8) The Appellant was advised of the proposed reduction of personal care hours by advance action notice on ██████████, with an effective date of ██████████. (Department's Exhibit A, p. 25)
- 9) The instant appeal 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.

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 Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case the ██████████ 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

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<sup>1</sup> The representative was called away to tend to a different, critically ill relative. She returned in early ██████████. See Department Ex. A, p. 2.

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); *See also* 42 CFR 440.230 (d)

### **SELF-DETERMINATION PRINCIPLES**

The SD in LTC option allows MI Choice participants direct control over the delivery of MI Choice services, the selection of workers to furnish services, and the approved MI Choice services budget. As part of the Cash and Counseling grant, MDCH developed a self-determination technical advisory titled "Choice Voucher System: Self-Determination in Long Term Care." ...

Participants selecting the SD in LTC option choose and control the providers of their services and supports. Self-determination embodies a set of concepts and values that participants have the right to define their lives and that the system of services should provide them with the freedom to do so and the authority to make decisions about their lives, including the opportunity to responsibly manage the use of needed services and supports.

Person-centered planning (PCP) is an essential component of SD in LTC. Using PCP, the participant and their supports coordinators (SCs) develop a plan of care (POC) and individual budget. The participant acquires and directs needed services and supports within the allocated budget. The waiver agent maintains accountability for service delivery, the use of Medicaid funds, and to support the participant in self-direction as needed. Participants and waiver agents utilize fiscal intermediaries to disburse the funds allocated in the participant's budget to the participant's chosen workers. All workers chosen by participants to furnish needed services and supports must meet specific criteria.

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### **ENROLLING AND INFORMING PARTICIPANTS**

Waiver agents must inform all MI Choice participants of the option to direct those services available through self-determination.

Participants choosing the SD in LTC option may enroll directly or use a representative. Representatives do not have to be a power of attorney or guardian. The participant's representative must sign the SD in LTC enrollment agreement.

The participant and SCs develop and agree on the POC through the PCP process. The waiver agent authorizes the types of services and number of hours determined in the POC. The participant (with assistance from SCs, allies, or others when necessary) identifies workers and back-up workers.

The participant and SCs develop a budget using a template approved by MDCH. The SCs provide the participant with a meaningful copy of the budget or budget worksheet. The participant signs the budget. The SCs and participant revisit the budget when the need arises, or at least every 90 days.

- The participant signs the Enrollment form or Self-Determination agreement. The Enrollment form or Self-Determination agreement must include participant's name, date of birth, Medicaid number, Social Security number, the enrollment date, and the participant's representative if the participant has designated a representative.
- An individual worker may not be a legally recognized spouse or guardian of the participant or self-determination representative.
- Identified workers sign a release for a criminal background check, employment application, Medicaid provider agreement, and employment agreement. Back-up worker(s) also sign these documents.
- The participant and SCs determine and arrange training needs for identified workers.
- The participant, waiver agent, and fiscal intermediary schedule the enrollment, determine the start date for SD in LTC, and sign all agreements and required documents. (Emphasis supplied),

MI CHOICE Waiver, Contract Requirements for Self Determination in Long Term Care, attachment N, pp. 1-3, October 1, 2008.

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The Department witness testified that the agency expressly agreed to temporarily raise the Appellant's personal care grant while her representative travelled out-of-state to tend to a critically ill relative. The document found at page 4 of the Department's Exhibit A<sup>2</sup> supports that agreement i.e., that personal care hours would return to 40-hours on the representative's return to Michigan.

The Appellant's representative now disputes that agreement and said that she was both overwhelmed with personal care chores and that there has been a significant change in condition concerning her mother [the Appellant].

Her needs for care are now "around the clock" – however, she produced no supporting medical evidence of such deterioration nor did she produce evidence of a different personal care agreement than the one she signed on ██████████. In fact her evidence at Appellant's Exhibit #2 supports her representative capacity, but lacks medical evidence supporting change in condition.

On review, the self determination waiver was sought to allow the Appellant the right to define her life with the requisite freedom and authority to make life decisions. She appointed her daughter [██████████] to make those decisions on her behalf. In turn the representative has made a personal care arrangement that she now seeks to breach.

- The proposed reduction was addressed in the Appellant's Plan of Care on reassessment conducted on ██████████.
- The agreement for a temporary increase was negotiated during ██████████, it was memorialized and then executed by the Representative and the Nurse manager on ██████████
- The Department stipulated that the Appellant is "total care."
- There was no new medical evidence to support the proposed change in condition.

The Department properly reduced personal care for the Appellant.

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<sup>2</sup> Supporting documentation of the agreement as entered into on ██████████ is found at Department's Ex. A, p. 26

**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 reduced the Appellant's personal care hours from 72-hours to 40-hours per week.

**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: 3/2/2010

**\*\*\* 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.