

**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. 2010-42549 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 representative. Her witness was her choreprovider ██████████. ██████████, community care manager, represented the Waiver agency. Her witness was Supports Coordinator ██████████.

ISSUE

Did the Department properly reduce community support services for the Appellant from 30-hours to 18-hours a week?

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. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with multiple sclerosis (MS), HTN, depression and anxiety. (Department's Exhibit A, p. 7)
- 3) The Appellant uses assorted devices to assist with ambulation. (Department's Exhibit A, p. 9)
- 4) The Appellant is compliant with medication and treatment and remains eligible [on assessment of ██████████] for services under Door #1. (Department's Exhibit A, p. 7)

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- 5) Following in-person assessment on [REDACTED] the Appellant was notified of the proposed reduction on [REDACTED].
- 6) The effective date of action was listed as [REDACTED]
- 7) There was no documentation of written notice from the Agency to the Appellant of the proposed reduction in services. (See Testimony)
- 8) The instant appeal was received by SOAHR on [REDACTED]

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 Senior Alliance – 1C, 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)

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 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)

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[] Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- 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)¹ of this section.

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

It is undisputed that the Appellant has a need for homemaking and personal care services at Door #1.

The MI Choice waiver defines Service and Personal Care as follows:

“A range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the person) or cueing to prompt the participant to perform a task. Personal care services may be provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law. Personal care under the waiver differs in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care services in the State plan. The differences between the waiver coverage and the State plan are that the provider qualification and the training requirements are more stringent for personal care as provided under the waiver than the requirements for this services under the State plan. Personal care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. This service may include assistance with preparation of meals, but does not include the cost of the meals themselves. When specified in the

¹ Services for the chronically mentally ill.

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plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the service furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. Personal care may be furnished outside the participant's home. The participant oversees and supervises individual providers on an ongoing basis when participating in SD options."

MI Choice Waiver, April 9, 2009, p. 45

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230

The Appellant is receiving services through the MI Choice waiver. She has assistance with home cleaning, lawn service, medication management, shopping, transferring, meal preparation and transportation – the Appellant uses assistive devices to ambulate.

The Department witness said that in ██████████ the Appellant was awarded 30-hours a week of services to assist her with moving to her new residence and packing and unpacking chores and settling in. She was also attending the ██████████ ██████████ and required frequent transportation by motor vehicle. The Appellant no longer attends the RIM and has settled into her new home. Upon assessment the in-home reviewer proposed reducing the Appellant's weekly hours to 18 hours – an increase of 6-hours from what the Department termed a temporary adjustment to accommodate the Appellant in ██████████ ██████████

The Appellant testified that she still needed the increased hours – in large part because she wanted to keep her choreprovider ██████████] owing to her high level of skill and honesty.

It is clear the Appellant's categories of needs have been addressed by the agency, and that the proposed reduction on assessment finds the Appellant in stable condition and settled in her new residence. She is no longer attending RIM.

The testimony and evidence of the Department witness Stone confirms that the Appellant does not need 30-hours of services per week and that the reduction to 18-hours reflects the amount of assistance the Appellant actually needs absent her participation in RIM and the need for further relocation assistance.

The Appellant has failed to preponderate her burden of proof that the Waiver agency erred in its assessment conducted on ██████████.

On change of condition the Appellant is free to contact the Waiver agency for reassessment.

² Prior to ██████████ the Agency reports that the Appellant received 6-hours of services per week.

The Department properly reduced homemaking care for the Appellant.

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 homemaking care hours from 30-hours to 18-hours per week.

IT IS THEREFORE ORDERED that:

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

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

cc:



Date Mailed: 9/30/2010

***** 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.