STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2010-43972 EDW
Case No. [redacted]

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 [redacted]. The Appellant was represented by [redacted]. [redacted] appeared and testified.

[redacted] for the [redacted], was present on behalf of the Department of Community Health (hereafter, 'Department'). [redacted], was present as a witness for [redacted].

ISSUE

Did the Department properly reduce the Appellant's Community Support Services under the MI Choice Waiver program?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a Medicaid beneficiary, and enrolled in the MI Choice Waiver program.

2. The Appellant has a history of rheumatoid arthritis, congestive heart failure, hypertension, peripheral vascular disease, osteoporosis, diabetes, and hypothyroidism. (Exhibit 1, pages 9-10)

3. The Appellant resides in her own one bedroom apartment and requires assistance with some activities of daily living and instrumental activities of daily living. (Hearing Summary and Exhibit 1, pages 13-14)

4. The Appellant had been receiving a total of 27 hours of personal care and homemaking services per week. (Supports Coordinator Testimony)

5. On [redacted], the supports coordinator completed an assessment at the Appellant's home. (Exhibit 1, pages 3-17 and Exhibit 2)

6. On [redacted], the waiver agency issued Notice to the Appellant that her waiver services would decrease to 20 hours per week effective [redacted], because the need for more hours was not deemed medically necessary. (Hearing Summary)

7. The Appellant requested a hearing [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.

The 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 Services to the Michigan Department of Community Health (Department). Regional agencies, in this case [redacted], 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)

[ ] 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 personal care services.

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,

1 Services for the chronically mentally ill.

> 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 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." (Emphasis supplied)
>
> MI Choice Waiver, April 9, 2009;
> Page 45

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

The Appellant is receiving personal care services through the MI Choice waiver. She was receiving services 27 hours per week, 20 hours of homemaking and 7 hours of personal care services. The waiver agency completed a reassessment of the Appellant's case and determined only 20 hours per week were medically necessary. The Appellant lives in a one bedroom apartment and has home delivered meals. The 20 hour per week authorization includes 2 hours of homemaking 7 days per week and 2 hours of personal care services 3 days per week. (Supports Coordinator and Community Care Department Manager)

The Appellant's son testified that the Appellant needs as much help as she can get, especially more personal care hours. He explained that the Appellant is not able to walk to the tub independently and needs assistance getting in and out of the tub. He stated that he has had to go over and clean up some days and believes daily bathing is necessary due to incontinence. ([redacted] Testimony) The Appellant testified that she often runs out of time with her aides and only gets a bath one or twice a week if she is lucky. She explained that the aides are out of the apartment most of the time, at the store or doing laundry. Shopping is done one or twice a week and while the store is only around the corner, the aides report that the lines are long. Similarly, the laundry facilities on the Appellant's floor may be busy and the elevators in her building are slow. (Appellant Testimony)

While there was an overall reduction of 7 hours per week, the evidence does not indicate that the additional hours were medically necessary. At the Assessment, the Appellant reported only infrequent incontinence episodes. (Exhibit 1, pages 12-13) If incontinence is causing a need for more frequent bathing, additional personal care, laundry, etc., this must be reported to the waiver agency so they can consider these needs in determining ongoing services. The Appellant's testimony also indicated that the aides are not being used as effectively as they could be. Shopping and laundry could be tried on different days/times when it may not be as busy and the groceries for the whole week could be purchased in

one trip to the store, rather than the aides going twice per week. This ALJ finds the MI Choice agency did offer and authorize appropriate services available under the program to meet the medically necessary needs of the Appellant. The waiver agency's reduction is upheld.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department properly reduced the Appellant's services under the MI Choice program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 10/12/2010

***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.