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

P.O. Box 30763, Lansing, MI 48909 (877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:	
,	Docket No. 2010-52501 EDW Case No. 95876231
Appellant /	
DECISION AND ORDER	
This matter is before the undersigned Administrat and MCL 400.37 upon the Appellant's request for	• .
After due notice, a hearing was held	. The Appellant represented herself.
of the Department of Community Health (hereafter, , was present and testified.	, was present on behalf ('Department').
ISSUE	
Did the Department properly reduce the nur Appellant through the MI Choice Waiver pro	

#### 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
- 2. The Appellant is a participant in Mi-choice Waiver services and has been for over ...
- 3. The Appellant currently meets service eligibility criteria through Door 7, service dependency.
- 4. The Appellant is diagnosed with diabetes, congestive heart failure, peripheral vascular disease, hypertension, COPD, osteoporosis and depression. She has had one knee replacement. She ahs a pinched nerve in her back and uncorrectable foot drop that has resulted in periodic falls.

### Docket No. 2010-52501 EDW Decision and Order

- 5. The Appellant has been receiving 35 hours of assistance per week with bathing assistance, meal preparation, laundry, homemaking and shopping. She is independent in dressing, grooming and toileting.
- 6. The Appellant recently had a case review by her supports coordinator and team nurse through the MI Choice Waiver program.
- 7. Following completion of the assessment, The MI Choice Waiver agency proposes to reduce the hours authorized to provide the needed services to the Appellant from 35 hours per week to 28 hours per week.
- 8. The services needed by the Appellant have not been changed as a result of the assessment, the time authorized to complete the services needed is proposed to be reduced.
- 9. The Appellant contests the proposal to reduce the number of service hours authorized.
- 10. On or about hours would be reduced.
- 11. The Appellant requested a formal, administrative hearing

#### **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 in service hours authorization 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 agencies, such as The administrative agency.

# Docket No. 2010-52501 EDW Decision and Order

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 MIChoice 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

## Docket No. 2010-52501 EDW Decision and Order

- 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, 2007, page 7.

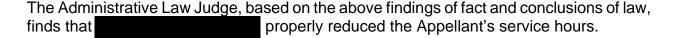
\*\*\*

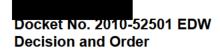
At hearing the Appellant asserted she requires a lot of assistance and still needs all 35 service hours she has been getting. She said she has a drop foot, falls and is unable to manage stairs. She cannot stand for long due to the pinched nerve and fatigue. She is unable to complete her shopping without assistance. She did not present evidence she required services in addition to those authorized, nor did she request them. She merely contested the proposed reduction is time.

The Department witness testified that services were not reduced, but rather the time authorized to provide the services had been reduced following a case review. Testimony was provided indicating her services would still be provided in adequate amount to achieve the purpose of the service and protect the health and safety of the Appellant. Evidence was presented the Appellant had not suffered any falls during the quarter reviewed, had no hospitalizations and self reported she only required assistance with meal preparation, laundry and shopping.

Based on the objective evidence in the record and the credible testimony of the Department's witness the reduction in hours was within law and policy. The service hours authorized are more than adequate to meet the Appellant's needs for assistance with bathing, homemaking, meal preparation and laundry. No unmet needs were evidenced, nor was there evidence the service hours proposal was inadequate to ensure her safety and welfare.

#### **DECISION AND ORDER**





#### IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

CC:



Date Mailed: <u>11/16/2010</u>

#### \*\*\* 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 filling 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.