

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. 2010-52501 EDW
Case No. 95876231

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 represented herself.

[REDACTED], was present on behalf of the Department of Community Health (hereafter, "Department"). [REDACTED], was present and testified.

ISSUE

Did the Department properly reduce the number of service hours authorized to the Appellant through 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. At the time of hearing the Appellant is [REDACTED].
2. The Appellant is a participant in Mi-choice Waiver services and has been for over [REDACTED].
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 has a pinched nerve in her back and uncorrectable foot drop that has resulted in periodic falls.

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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 ██████████, the Appellant was notified that her service 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 ██████████, 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 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

- 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 in 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.

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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that ██████████ properly reduced the Appellant's service hours.


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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: 11/16/2010

***** 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.