

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

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IN THE MATTER OF:

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2010-40592 EDW

Case No. ██████████

**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 ██████████. The Appellant was represented by ██████████, son. The Appellant's wife, ██████████, was present and testified.

██████████ Medicaid Waiver Program Supervisor for the ██████████, was present on behalf of the Department of Community Health (hereafter, 'Department'). ██████████ Supports Coordinator, was present as a witness for ██████████

**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 stroke, hypertension, and vetigo. He is totally dependant for instrumental activities of daily living and requires assistance or is totally dependant for many activities of daily living. (Exhibit 1, pages 11-12 and 15-17)
3. The Appellant resides in his own home with his wife and son. The Appellant's son is his primary caregiver. (Exhibit 1, pages 5-6 and 11)
4. The Department's MI Choice waiver agent authorized services in recognition of the fact that the Appellant has natural supports, his wife and daughter, that also provide some of his personal care and homemaking needs. (Page Testimony and Exhibit 1, pages 5-19)
5. The Appellant had been receiving a total of 28 hours of personal care and homemaking services per week. ██████████ Testimony)
6. The waiver agency increased the Appellant's service hours to 40 hours per week because of his wife was hospitalization, which was followed by rehabilitation. (██████████ Testimony)
7. After the Appellant's wife returned home, the waiver agency reviewed the current service level. ██████████ Testimony)
8. On ██████████, the supports coordinator completed an assessment at the Appellant's home with the Appellant's wife and son. ██████████ Testimony and Exhibit 1, pages 5-19)
9. On ██████████ the waiver agency issued an Advanced Action Notice to the Appellant that his waiver services would decrease to 30 hours per week effective ██████████ because the need for more hours was not deemed medically necessary. (Exhibit 1, page 2)
10. The Appellant's son objects to the reduction in service hours and asserts the Appellant's wife has not been able to provide any assistance to the Appellant since she returned home.
11. The Appellant requested a 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.

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)<sup>1</sup> 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.

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<sup>1</sup> Services for the chronically mentally ill.

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 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. He was receiving services 28 hours per week, until his wife was hospitalized. The waiver agency then increased the Appellant to 40 hours per week while his wife in the hospital then rehabilitation. After his wife returned home, the waiver agency completed a reassessment of the Appellant’s case and determined only 30 hours per week were medically necessary. The 30 hours per week authorization includes:

- 1 hour 7 days per week for AM assistance (getting up, dressing, personal hygiene, etc.)
- 3 hours per week for bathing assistance
- 1 hour 7 days per week for PM assistance (getting ready for bed, personal hygiene, etc.)
- 3 hours per week for homemaking services
- 10 hours per week for meal preparation, incontinent care, or other assistance

(Page Testimony)


The Appellant's son testified that the Appellant's wife has not been able to help herself, let alone her husband since she returned home. The Appellant's wife testified that she can't get her strength and health back, therefore she is unable to do for her husband. The Appellant's sons asserts that the service hours should not have been decreased when the Appellant's wife returned home because she still can not provide any assistance to him. However, the waiver agency testified that they did consider that the Appellant's wife was only able to provide limit support when she returned home. They indicated the reduction was based on a lack of medical necessity for 40 hours of services per week.

The waiver agency must review their MI Choice Waiver program cases for quality performance, including reassessments to assure that the agency is providing adequate services where medically necessary. This ALJ understands the concerns raised by a 10 hour per week reduction upon the Appellant's wife returning home when she is not able to provide the support and assistance she used to. However, the Appellant's son did not meet his burden of establishing that 40 hours of services per week was medically necessary. When asked to explain how the authorized 30 hours per week described above was insufficient to meet the Appellant's needs, the Appellant's son indicated that he is on call all the time all day. Despite repeated questioning, the Appellant's son did not provide detailed testimony regarding the care the Appellant needs and how long it takes to provide assistance with specific tasks.

The Appellant's son did not meet his burden of proving that the authorized 30 hours per week of MI Choice Waiver services was not sufficient 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.

  
Docket No. 2010-40592 EDW  
Decision and Order

**IT IS THEREFORE ORDERED** that:

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

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

cc: 

Date Mailed: 9/17/2010

**\*\*\* 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.