

2. The Appellant has a history of paraplegia, peripheral vascular disease, transient ischemic attack, traumatic brain injury, anxiety, depression, diabetes, elbow pressure ulcer, fibromyalgia, cardiac dysrhythmia, and hypotension. (Exhibit 1, pages 7-8)
3. The Appellant resides alone in a private home and requires assistance with activities of daily living and instrumental activities of daily living. (Exhibit 1, pages 1 and 11-12)
4. The Department's MI Choice waiver agent authorized services in recognition of the fact that the Appellant has strong natural supports, a sister and 4 children, that also provide some assistance. ([REDACTED] Testimony)
5. The Appellant had been receiving a total of 45.5 hours of personal care and homemaking services per week. (Hearing Summary)
6. On [REDACTED], the supports coordinator completed an assessment at the Appellant's home. (Exhibit 1)
7. On [REDACTED], the waiver agency issued an Advanced Action Notice to the Appellant that her waiver services would decrease to 38.5 hours per week effective [REDACTED] because the need for more hours was not substantiated. (Hearing Summary)
8. 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 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)

[] 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

¹ Services for the chronically mentally ill.

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. She was receiving services 45.5 hours per week, 4 hours per day of personal care and 2.5 hours per day for homemaking. The waiver agency completed a reassessment of the Appellant's case and determined only 38.5 hours per week were medically necessary, reducing homemaking by 1 hour per day because the Appellant lives in a small one bedroom apartment. The 38.5 hours per week authorization includes 4 hours per day of personal care and 1.5 hours per day of homemaking. (Hollingsworth Testimony)

The Appellant testified that the total of 5.5 hours per day is not sufficient to meet her medical needs. She explained that she has open wounds/sores that require a long treatment procedure, which can not be completed along with her other personal care in the allowed 4 hours per day. Therefore the time spent treating the sores takes away from her homemaking hours. She stated she has three sores, one on her right foot and two on her buttocks. However, she testified she got the sores in May. Accordingly, they could not have been considered in the ██████████ assessment, which was the basis for the ██████████ negative action notice.

While outside the scope of this hearing, a subsequent ██████████ assessment was

discussed. In reviewing the skin condition section of the assessment report, it appears that the Appellant did not report the sores on her right foot and buttocks and the required extensive treatment at the more recent assessment. (Exhibit 2, page 10) The Appellant must let the waiver agency know when she has changes in her condition so the waiver agency can determine the appropriate level of ongoing services.

While there was an overall reduction of 7 hours per week, this was specifically in the area of housekeeping due to the Appellant living in a small one bedroom apartment. The waiver agency explained that the 10.5 hours of homemaking per week (1.5 hours per day, 7 days per week) allows for 30 minutes per day for breakfast (3.5 hours per week.) Only breakfast time was allowed because the Appellant makes her own lunch and has home delivered meals for dinner. They stated approximately 3 hours per week for cleaning/laundry and 3 hours per week for shopping/errands were allowed. The waiver agency also noted that the Appellant has strong informal supports in her sister and four children. (Hollingsworth Testimony) As this would only total 9.5 hours per week (3.5 hours breakfast, 3 hours cleaning/laundry, and 3 hours shopping/errands), the waiver agency actually proposes 1 additional hour per week allowed for homemaking services for the Appellant.

The Appellant argued that it takes longer than 3 hours per week for shopping/errands. However, 4 hours per week could be used for shopping/errands in the authorized 10.5 hours per week for homemaking services. The Appellant also has strong informal supports. As noted above, the evidence indicates she did not inform the waiver agency of the extensive personal care needs so that this time could be adjusted. 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 based on the information available at the time of the assessment. 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

[REDACTED]
Docket No. 2010-41206 EDW
Decision and Order

cc:

[REDACTED]

Date Mailed: 9/22/2010

***** 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.

