

**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. 2010-55951 EDW

██████████,

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████
██████████, represented the Appellant. The Appellant was not present.

██████████ (AAA) was present on behalf of the Department of Community Health (Department) waiver program. ██████████
██████████ and; ██████████
██████████; appeared as witnesses for the AAA.

ISSUE

Did the Department properly deny the Appellant an additional one hour per day of MI Choice Waiver personal care services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is ██████████ Medicaid beneficiary, and enrolled in the MI Choice Waiver program. (Exhibit 1).
2. The Appellant resides in his home with his Appellant's ██████████
██████████. (Exhibit 2).
3. The Appellant has services authorized through the MI Choice Waiver program. In ██████████ Appellant's ██████████
requested an increase and at that time his service authorization hours were increased.

4. The Appellant's current MI Choice waiver services per the ██████████, increase include
 - personal care two hours per day, 7 days per week;
 - homemaking three hours a day Monday through Friday;
 - homemaking two hours per day Saturday and Sunday;
 - home delivered meals, one meal per day, five days a week. (Exhibit 1).
5. On ██████████, the Appellant's ██████████ requested an increase in MI Choice waiver hours for an additional hour of personal-care seven days a week. The Appellant's ██████████ stated that the increased hours were needed because his ██████████ had become more confused, needed more prompting, and needed more cleaning and bathing due to more frequent bowel accidents since the ██████████ authorization. (Exhibit 1, page 7).
6. On ██████████, the MI Choice waiver team performed a full reassessment of the Appellant at Appellant's home with Appellant's ██████████ present. (Exhibit 1, pages 17-31).
7. During the full assessment the MI Choice waiver social worker care manager and nurse asked the Appellant questions, observed his abilities and assessed that although he had dementia the degree of overall mental and physical change from the assessment in ██████████ was none to minimal. (Exhibit 1, pages 17-31).
8. Based on the MI Choice waiver agency in-person observations, that there was no or minimal change in mental or physical condition since the ██████████ assessment, the MI Choice waiver denied the additional seven personal care hours per week requested by Appellant's ██████████, and provided notice of the denial. (Exhibit 1, pages 17-31).
9. On ██████████, the Appellant, through his ██████████, requested a hearing to contest the denial of the 7 hour per week increase in personal care hours. The State Office of Administrative Hearings and Rules received the request for hearing on ██████████. (Exhibit 2).

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).

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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.

This 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 (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case an Area Agency on Aging (AAA), 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.

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- 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) 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).

The Operating Standards applicable to the MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards include personal care services, the service for which Appellant is currently approved to receive 5.7 hours per day.

The MI Choice waiver defines Personal Care as follows:

“...assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may also include assistance with the preparation of meals but does not include the cost of the meals. 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 care furnished, or which are essential to the health and welfare of the individual, rather than the individual’s family. . . .”

*MI Choice Waiver, Updated September 2002;
Attachment H, pages 43 and 44*

The Appellant is receiving two personal care service hours per day through the MI Choice waiver since at least ██████████. In ██████████ the Appellant’s ██████████ requested an additional one hour per day of personal care services. The Appellant currently receives a total of five hours of personal care and homemaking Monday through Friday and four hours personal care and homemaking Saturday and Sunday. With the increased one-hour of personal care the Appellant would be receiving a total of six hours of personal care and homemaking Monday through Friday and five hours of personal care and homemaking Saturday and Sunday.

The MI Choice waiver is a Medicaid funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. 42 CFR 440.230. In order to assess what MI Choice waiver program services are medically necessary and therefore Medicaid-covered, the MI Choice waiver program performs periodic assessments.

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In [REDACTED], the MI Choice waiver program assessment team performed an in-person assessment for the Appellant and determined that two hours per day of personal care was medically necessary. A few months later, the Appellant's [REDACTED] contacted the MI Choice waiver program to increase the personal care hours by an additional hour of personal care per day. The Appellant's [REDACTED] stated that the increased hours were needed because his [REDACTED] had become more confused, needed more prompting, and needed more cleaning and bathing due to more frequent bowel accidents since the [REDACTED] authorization. (Exhibit 1, page 7). Based on the request for increased hours a MI Choice waiver team went to the Appellant's home. On that day, the MI Choice assessment team performed a full assessment with the Appellant and his [REDACTED].

During the full assessment the MI Choice waiver social worker care manager asked the Appellant questions and observed the Appellant. Based on the Appellant's answers, the MI Choice waiver social worker care manager, a professional experienced with assessing a person's mental status, assessed that the Appellant continued to have dementia though the decline in mental and physical status were not significant enough to merit an increase in hours. (Exhibit 1, page 20).

Based on the MI Choice waiver assessment team's observations of the Appellant, answers to questions by the Appellant and his [REDACTED], and including the other supports available to the Appellant, the MI Choice waiver agency denied the additional 7 hours of personal care per week requested by the Appellant's chore provider-nephew. In particular, the MI Choice waiver assessment team noted that the Appellant's overall need had not changed or only minimally since the authorization in [REDACTED].

The Appellant's [REDACTED] testified he asked for the additional hours because the Appellant was becoming more confused with dementia and needed to use incontinence products. The Appellant's [REDACTED] explained that because of the Appellant's increased bowel incontinence he needs to perform for Appellant more bathing and changing of incontinence products.

The MI Choice waiver agency's representative testified that a nurse and social worker went to the home and evaluated the Appellant but found that his physical needs for either personal care or for homemaking had not changed enough since [REDACTED] to merit an increase and therefore there could not be an increase. The MI Choice waiver agency's representative noted that the Appellant also receives personal care service hours each day for a total of five to six hours per day of MI Choice waiver care, and in addition one meal per day delivered to the home.

This ALJ finds the MI Choice agency did authorize an appropriate number of personal care service hours to meet the medically necessary needs of the Appellant. The Appellant failed to establish by a preponderance of the evidence that an additional one

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personal care hour per day (seven hours per week) were medically necessary for the Appellant. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional personal care services cannot be authorized for the Appellant based upon the evidence of record. *42 CFR 440.230*.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the Department properly denied the Appellant's request for an increase of seven personal care service hours per week.

IT IS THEREFORE ORDERED that:

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

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 11/9/2010

***** 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.