

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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

IN THE MATTER OF:

██████████,

Appellant

\_\_\_\_\_ /

Docket No. 2011-18600 EDW  
Case No. ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant was present for the hearing. His ██████████, appeared as his representative and translator. ██████████ ██████████, the ██████████ for the Michigan Department of Community Health, represented the waiver agency. ██████████

██████████, were present as the waiver agency's witnesses.

**ISSUE**

Did the waiver agency properly reduce the Appellant's services under the MI Choice Waiver program?

**FINDINGS OF FACT**

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds, as material fact:

1. The Appellant is a Medicaid beneficiary and enrolled in the MI Choice Waiver program.
2. The Appellant is ██████████ and has a history of paraplegia. (Exhibit 1, page 4)

3. The Appellant resides alone in a private home and requires assistance with some activities of daily living and all instrumental activities of daily living. (Exhibit 1, pages 5-6)
4. The Appellant had been receiving a total of 40 hours per week of personal care and homemaking services. (Exhibit 1, page 2)
5. On ██████████, the ██████████ ██████████ completed a 90-day assessment at the Appellant's home and determined that the Appellant's need for services had decreased. (Exhibit 1, pages 4-12)
6. On ██████████, the waiver agency issued an Advanced Action Notice to the Appellant that his waiver services would decrease to 35 hours per week effective ██████████ because his functional status has improved. (Exhibit 1, page 3)
7. The Appellant requested a hearing on ██████████.

### **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, HHS, Health Options, 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. 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

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

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 receives personal care and homemaking services through the MI Choice waiver. He was receiving services 40 hours per week, which consisted of 33 hours per week of personal care and 7 hours per week for homemaking. The waiver agency completed a reassessment of the Appellant's case in ██████████ and determined that only 35 hours per week were medically necessary, reducing personal care by 5 hours per week.

The 35-hour per week authorization includes 4 hours per day of personal care per and 1 hour per day of homemaking. (Exhibit 2, page 3) The waiver agency's witnesses testified that the Appellant's services were reduced because he is able to transfer independently, he can insert his own catheter, he can prepare small meals for himself, and he is able to drive. His caregiver only assists him during evening hours. During the day, the Appellant is able to care for himself. Therefore, his need for services did not match the number of service hours he was receiving.

The Appellant's son testified that 4 hours per day of personal care is not sufficient to meet the Appellant's needs. He explained that his uncle, the Appellant's caregiver, is in the Appellant's home at least 6 hours per day. He stated that his uncle assists the Appellant with bathing, cleans the Appellant's house, cooks for the Appellant, shops for the Appellant, and helps the Appellant in and out of the car. However, he agreed that the Appellant can transfer himself and that he does drive by himself. He further testified that the Appellant sleeps until noon everyday and that he (the son) assists the Appellant everyday from noon until 2:30 p.m. Finally, the Appellant's son testified that the Appellant watches television until 12:30 a.m. and then is able to go to bed by himself.

This Administrative Law Judge finds that the waiver agency's reduction of the Appellant's

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services was proper. The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly reduce his MI Choice Waiver services. He failed to do so in this case. The Appellant has failed to show that the 35 hours per week of services the waiver agency authorized is not sufficient to meet his needs.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judges decides that the waiver agency properly reduced the Appellant's services under the MI Choice program.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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Kristin M. Heyse  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/9/2011

**\*\*\* NOTICE \*\*\***

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.