

**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. 2011-26297 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 ██████████. ██████████, Durable Power of Attorney and son, appeared on the Appellant's behalf. ██████████, appeared on behalf of ██████████, the Department of Community Health's MI Choice program waiver agency (hereafter, Department). The hearing record was left open for additional documentation, which has been received.

ISSUE

Did the Department properly deny the Appellant's request for a 2 hour per day increase in personal care 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 multiple diagnoses, including arthritis, anxiety, depression, and torn rotator cuff with right arm tendonitis. She had a benign brain tumor removed at age ██████, a meningioma removed in ██████, and hydrocephalus with VP shunt. The Appellant has had many infections of shunt requiring surgeries resulting in short term memory loss. (Exhibit 1, pages 10-11)

3. The Appellant also has a history of astrocytoma, glioma, meningioma and shunted hydrocephalus with multiple shunt revisions. Her physician requests a home health aid for 6-8 hours per day. (Exhibit 2, pages 1-2)
4. The Appellant lives with her son and a roommate. (Exhibit 1, page 4)
5. The Appellant requires extensive assistance or is totally dependant on others with most activities of daily living and instrumental activities of daily living. (Exhibit 1, pages 13-14)
6. The Department's MI Choice waiver agent authorized services in recognition of the fact that the Appellant has some informal supports that provide assistance to the Appellant. (Exhibit 1, page 5)
7. The Appellant had been receiving 19 hours of personal care and 14 hours of homemaking per week through the MI Choice Waiver. (Hearing Summary and Exhibit 1, page 22)
8. On ██████████, a re-assessment visit to Appellant's home was conducted because the Appellant's family requested an increase of 2 hours per day. (Hearing Summary and Exhibit 1, pages 1-17 and 20)
9. The waiver agency determined that the assessment conducted on ██████████, did not substantiate need for an additional 2 hours per day. (Hearing Summary)
10. The waiver agency authorized 21 hours per week of personal care services effective ██████████. (Exhibit 1, page 23 and 26)
11. On ██████████, the waiver agency issued notice to the Appellant that her request for an additional 2 hours of personal care services per day was denied. (Hearing Summary and Exhibit 1, page 19)
12. On ██████████, the Appellant requested a formal administrative hearing. (Request for 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 Area Agency on Aging 1B, functions 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 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

¹ Services for the chronically mentally ill.

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)

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Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230.

In the present case, the Appellant has been receiving 19 hours of personal care and 14 hours of homemaking per week through the MI Choice waiver. (Hearing Summary and Exhibit 1, page 22) On ██████████, a re-assessment visit to Appellant's home was conducted because the Appellant's family requested an increase of 2 hours per day. (Hearing Summary and Exhibit 1, pages 1-17 and 20) The waiver agency determined that the assessment conducted on ██████████, did not substantiate need for an additional 2 hours per day. (Hearing Summary) However, an additional 2 hours per week of personal care services was authorized effective ██████████. (Exhibit 1, page 23)

The Appellant's son testified that they have made multiple requests for an increase to 6-7 hours per day. He stated this is what the Appellant received when she lived in Lansing. The Appellant's son stated they have offered to provide doctors notes for support, which were not accepted by the waiver agency. (Son Testimony) A ██████████ prescription from the Appellant's doctor requesting a home health aid for 6-8 hours per day was submitted. (Exhibit 2) The Appellant's son explained that the Appellant's urinary incontinence has not improved and showers take longer as these areas must be cleaned well. She also has a hard time walking if she does not use her walker. The Appellant's son indicated he provides some care for the Appellant when the caregiver's are there, and tries to do everything when the aides are not there. He stated that their roommate provides some very limited assistance to the Appellant. However, the Appellant's son testified that the Appellant's needs are being met. (Son Testimony)

This ALJ finds that there is insufficient evidence to support the medical necessity of the requested increase. The waiver agency properly considered that the Appellant receives assistance from informal supports, mostly her son and some minimal assistance from her roommate. (Exhibit 1, page 5) The current authorization of 21 hours of personal care services and 14 hours of homemaking services per week equates to 5 hours of services daily for the Appellant. The waiver agency suggested splitting up the hours into two shifts, but the Appellant's son declined. The waiver agency also offered respite hours, which were declined. (Exhibit 1, pages 5 and 19)

The Appellant's son did not meet his burden of proving that the authorized 21 hours of

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personal care services and 14 hours of homemaking services per week were insufficient to meet the medically necessary needs of the Appellant. The waiver agency's determination is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department properly denied the Appellant's request for a 2 hour per day increase in personal care services under the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/27/2011

***** 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.