

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-33425 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 ██████████. ██████████ appeared and was represented by the Appellant's daughter, ██████████.

██████████, Hearings Coordinator appeared on behalf of HHS Health Options, the Department's MI Choice program waiver agency (hereafter, Department). ██████████, ██████████ and ██████████, appeared as witnesses for the Department.

ISSUE

Did the Department through HHS Health Options properly deny the Appellant's request for an increase in Community Living Supports (CLS) services from 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 is enrolled in the MI Choice Waiver program.
2. The Appellant has a diagnosis of Guillian Barre Syndrome and Quadriplegia/Paresis. (Exhibit 1, page 6)
3. The Appellant resides in his own home and a rural area. He is totally dependent on others for toileting, eating, personal hygiene, and dressing and

requires assistance with most activities of daily living. He is totally dependent on others for his instrumental activities of daily living. (Exhibit 1, pages 7-8)

4. The Appellant's father is deceased. The Appellant's mother had been a back up Community Living Supports (CLS) worker and an informal supports provider. The Appellant's mother currently is unable to provide any informal supports or act as a back up worker due to her age and physical limitations.
5. The Appellant is currently receiving 12 hours per day, 7 days per week of CLS services. The 84 hours per week is provided as follows: 60 hours per week are provided through self determination and 24 hours per week are provided through MI Choice Waiver contracted providers.
6. The Appellant, through self determination, has elected to receive his approved CLS through 12 continuous hours, 8:00 AM to 8:00 PM, per day of CLS.
7. In ██████████ the Appellant requested an increase in his authorized CLS hours due to a loss of informal supports from his mother.
8. On ██████████, the Appellant's Case Manager, ██████████, completed a service assessment to assess the Appellant's need for an increase in CLS. (Exhibit 1, pages 2-27 and 29) ██████████ concluded in her assessment that the Appellant's medical need for CLS had not changed from the previous assessment.
9. On ██████████, the waiver agency issued Notice to the Appellant that his request for an increase in CLS services was denied. (Exhibit 1, page 3)
10. On ██████████, the Michigan Administrative Hearing System for the Department of Community Health received the Appellant's request for an administrative hearing.
11. On ██████████, ██████████, prescribed 24/7 care for the Appellant. (Appellant's Exhibit 1)

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 Northeast Michigan Community Service Agency, 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) 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).

Neither the waiver agency nor the Appellant dispute the fact that the Appellant has a medical need for personal care and CLS waiver services. The Appellant is entitled to


receive all medically necessary services provided by the Department through the HHS Health Options. The amount, scope, and duration of authorized services must be sufficient to reasonably achieve the purpose of the service in dispute. 42 CFR 440.230. The undisputed facts show that on [REDACTED], Case Manager, completed an assessment of the Appellant's need for MI Choice Waiver services. [REDACTED] concluded that the Appellant had a medical need for 12 hours a day, 7 days per week of CLS. Department Waiver Exhibit, page 22. On [REDACTED], in response to the Appellant's request for an increase in CLS hours, [REDACTED] completed a service assessment. [REDACTED] concluded that the Appellant continued to have a medical need for 12 hours per day, 7 days per week of CLS. Department Waiver Exhibit, page 13.

The Appellant disputes [REDACTED] determination that he does not have an increased medical need for additional CLS hours. The Appellant's daughter testified that the Appellant's mother, who had been an informal support and back up caregiver was no longer, due to her declining health, able to provide any support to the Appellant. The Appellant's daughter testified that the Appellant's mother has vision impairment and is unable to drive. In addition, the Appellant's mother has suffered a wrist injury. The Appellant's daughter testified that [REDACTED] did not consider the loss of the Appellant's mother as a caregiver.

In response [REDACTED] testified that the Appellant's medical need for CLS would be met through 12 hours per day, 7 days per week of CLS. [REDACTED] indicated that the Appellant, through self determination, made a decision to have his CLS services provided through a continuous 12 hour block of time. [REDACTED] indicated that the Appellant did not have a medical need for continuous CLS and as a result could divide the 12 hours per day of CLS into 3 4-hour blocks, which would cover the Appellant's morning, afternoon, and evening care. [REDACTED] indicated that she has other quadriplegics on her case load and that their service needs are adequately met through morning, afternoon, and evening blocks of CLS.

The Appellant's daughter testified that the Appellant's physician, [REDACTED] provided a prescription for 24/7 care and that the loss of the Appellant's mother as a caregiver, combined with the remote location of the Appellant's home made block CLS scheduling impossible and rendered the 12 hours per day authorization inadequate. The Appellant's daughter testified that the Appellant spends 12-13 hours per day in bed and often soils himself. She indicated that if the Appellant's caregivers were not continuously present in the Appellant's home the Appellant would have to spend hours in his bed, in soiled diaper, waiting for his CLS workers to arrive.

The evidence presented shows that the Appellant's medical condition and medical need for CLS services as outlined in the [REDACTED], and [REDACTED] assessments completed by [REDACTED] are identical. The Appellant's physician's opinion to the contrary is evidence of the Appellant's medical need for CLS services but is not controlling. A careful review of the prescription for 24/7 care shows that [REDACTED], and not [REDACTED], wrote a script for 24/7 care. Even if [REDACTED] had written the script, it would


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be just one piece of evidence which must be weighed and considered along with all evidence presented.

I find that the evidence presented shows that the Appellant's medical needs for CLS services is being met through his current authorization of 12 hours of CLS per day, 7 days per week. The amount, scope and duration of the CLS authorization are sufficient to reasonably achieve the purpose of CLS services.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department, through HHS Health Options, did properly deny the Appellant's request for an increase in Community Living Supports (CLS) services from the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

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

Martin D. Snider
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/12/2011

***** 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.