

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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

██████████

Appellant

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Docket No. 2011-13353 EDW  
Case No. 34574463

**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 ██████████. ██████████, the Appellant, appeared on his own behalf. ██████████, appeared as a witness for the Appellant.

██████████ appeared on behalf of ██████████, the Department of Community Health's MI Choice program waiver agency (hereafter, Department). ██████████, and ██████████, both with ██████████, appeared as witnesses for the Department.

**ISSUE**

Did the Department properly deny the Appellant's request for a 2 hours 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 malignant renovascular hypertension, morbid obesity, chronic obstructive pulmonary disease, coronary artery disease, peripheral vascular disease, diabetes mellitus, arthritis, seizure disorder, anxiety, depression and bipolar disorder. (Exhibit

C, pages 9-10)

3. The Appellant resides in his own apartment, is dependant on others and requires assistance with most activities of daily living and instrumental activities of daily living. (Exhibit C)
4. The Appellant has been receiving 8 hours of homecare and personal care services 7 days per week through the MI Choice waiver. (Exhibits B and D)
5. On ██████████, the Nurse Care Manager and the Supports Coordinator completed a re-assessment at the Appellant's home, during which the Appellant requested an additional 2 hours of personal care services for an evening shift. (Exhibit C)
6. The waiver agency determined that the current authorization of 8 hours per day can adequately address his personal care and home making needs, noting that the Appellant could split the 8 hour shift into 2 shifts to allow for care in the evening hours. (Exhibit B)
7. On ██████████, the waiver agency issued notice to the Appellant that his request for an additional 2 hours of personal care services per day was denied. (Exhibit B)
8. The Appellant requested a hearing ██████████. (Exhibit A)

### **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 ██████████ 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)<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.

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

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 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 8 hours per day of homemaking and personal care services through the MI Choice Waiver program. (Exhibits C and D) During the ██████████ re-assessment, the Appellant requested an additional 2 hours of personal care services to add an evening shift to assist with toileting tasks. (Exhibits B and C) The waiver agency discussed the option of splitting the current 8 hour authorization into two shifts so that the Appellant could have assistance in the evenings. (Exhibits B and C) The Appellant was not willing to consider this option. The waiver agency denied the Appellant’s request for an increase in personal care services because 8 hours per day can

adequately address his personal care and homemaking needs. (Exhibit B)

The Appellant testified that his current caregiver is not available later in the evening because he goes to school. He wants to have his current caregiver continue to work an 8 hour shift and add a second caregiver for a 2 hour evening shift. The Appellant wears Depends and was concerned about having to stay in a soiled Depend until the next morning if he has an accident after his caregiver leaves. However, the Appellant also stated that he has adjusted when he eats to prevent such accidents. (Appellant Testimony)

The Appellant's caregiver testified that he believes 8 hours is sufficient to meet the Appellant's needs. He explained that the Appellant is rehabbing to rebuild muscle and has been getting his weight and health back. (Caregiver Testimony)

This ALJ finds that there is insufficient evidence to support the medical necessity of the requested increase. It is understandable that the Appellant does not want to cut the hours of his current caregiver to receive assistance later in the evenings. However, if his needs can be met with 8 hours of services, either with a straight 8 hours shift or split into two shifts to allow for assistance later in the evening, additional hours can not be authorized.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide the Department properly denied the Appellant's request for a 2 hour increase in personal care services under the MI Choice Waiver program.

**IT IS THEREFORE ORDERED** that:

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

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

[REDACTED]  
Docket No. 2011-13353 EDW  
Decision and Order

cc:

[REDACTED]

Date Mailed: 4/6/2011

**\*\*\* 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.