

3. The Appellant resides in his own condo, is dependant on others and requires assistance with most activities of daily living and instrumental activities of daily living. (Exhibit 1, pages 6 and 11-14)
4. The Appellant had been receiving personal care and homemaking services 17 hours per day on dialysis days and 22 hours on non-dialysis days. (Regional Supervisor Testimony)
5. On [REDACTED], the waiver agency a completed a re-assessment at the Appellant's home. (Exhibit 1, pages 1-17)
6. On [REDACTED], the waiver agency issued a notice to the Appellant that his personal care and homemaking services would be reduced to 12 hours per day. (Hearing Summary)
7. The Appellant requested a hearing [REDACTED]. (Hearing Request)

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, 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)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)

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

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

¹ Services for the chronically mentally ill.

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)

MI Choice Waiver, April 9, 2009;
Page 45

In the present case, the waiver agency completed a re-assessment at the Appellant's home on [REDACTED]. (Exhibit 1, pages 1-17)

As a result of the re-assessment, the waiver agency determined the Appellant needed 12 hours of daily hands on care. (Hearing Summary) This is a significant reduction from the previously authorized personal care and homemaking services 17 hours on dialysis days and 22 hours on non-dialysis days. The waiver agency proposed the reduction based on the information the Appellant provided during the home visit. The reassessment notes indicate that the Appellant displayed anxiety over when his workers would be present and expressed that he does not like to be alone. (Exhibit 1, page 8) The Appellant only reported a little wound on the underside of his right stump and stated that all the other wounds have healed. It was also noted that the Appellant receives skilled care for monitoring of wound care. (Exhibit 1, page 10)

The Appellant disagrees with the reduction and provided testimony regarding his multiple medical conditions. The Appellant stated he is immobile and has stage 3-4 wounds. The Appellant requested the personal care and homemaking hours remain at 17-22 hours per day for another 60 days to allow his wounds to heal. He stated that every 2 hours he needs to be repositioned, personal care must be provided for frequent defecation and wound care to prevent infection. The Appellant testified that he does not have long periods that he is sleeping, rather if he is up he will be down in two hours. He testified that he is comfortable with the vendor currently providing the personal care and homemaking services, where most of his caregivers come for 4-6 hour shifts. He stated that they can not accommodate breaking up the proposed 12 hours per day authorization into 2 hours shifts.

The documentation submitted by the Appellant's providers is somewhat inconsistent regarding his wounds. The Registered Nurse indicates a stage IV decubitus ulcer on his ischium that is very close to the anus. (Exhibit 2, page 1) A Physicians Assistant noted tunneling sacral decubitus ulcers requiring aggressive wound therapy. (Exhibit 2, page 4) The Nurse Practitioner only indicated a right thigh wound that has been slow to heal. (Exhibit 2, pages 2-3) The Metro Home Health Care Aid did not mention any pressure ulcers or wounds. (Exhibit 2, page 5) The Dynamic Home Care Registered Nurse noted a stage 4 pressure ulcer but did not indicate the location. (Exhibit 1, page 6)

The evidence did support the Appellant's need for repositioning every 2 hours and for extensive personal care and homemaking services. While this ALJ understands that the Appellant is comfortable with his current vendor and routine, the Regional Supervisor testified that the waiver agency has vendors who can accommodate six 2 hours shifts per day to accommodate the Appellant's needs for repositioning every 2 hours and provide frequent assistance with personal care and homemaking sufficient to meet the medically necessary needs of the Appellant. The waiver agency's reduction is upheld.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department properly reduced the Appellant's personal care and homemaking services provided 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

[REDACTED]
Docket No. 2011-25342 EDW
Decision and Order

cc:

[REDACTED]

Date Mailed: 7/11/2011

***** 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.