

**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

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Docket No. 2011-42001 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. ██████████, sister, appeared on the Appellant's behalf. ██████████, Care Management Director, appeared on behalf of ██████████ the Department's MI Choice Waiver program agency (hereafter, waiver agency). ██████████, Social Worker Case Manager, and ██████████ Supervisor of Operations, appeared as witnesses for the waiver agency.

**ISSUE**

Did the waiver agency properly reduce the Appellant's personal care and homemaking services provided 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 a history of stroke, anemia, seizures, urinary tract infections, neurogenic bladder, constipation, fatigue, MRSA, coronary artery disease, cellulites, and gastritis. (Exhibit 1, Attachment H, pages 17-32)
3. The Appellant resides with his sister, who cares for him. (Uncontested)
4. The Appellant had been receiving personal care and homemaking services at 56 hours per week. (Exhibit 1, page 1)

5. The Appellant's condition had been stable at the time the waiver agency proposed a reduction to the personal care and homemaker hours authorized through the MI Choice Wavier program. (Exhibit 1, page 1)
6. On ██████████, the waiver agency issued a notice to the Appellant that his personal care and homemaking services would be reduced to 40 hours per week effective ██████████. (Exhibit 1, Attachment A, page 3)
7. On ██████████, the Appellant's request for Hearing was received contesting the reduction. (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 ██████████, 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)

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 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

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

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;  
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At the time of the ██████████, action, the waiver agency determined that the Appellant's personal care and homemaking needs could be met within 40 hours per week of services. The waiver agency also provided testimony regarding the hours authorized for the Appellant compared to other waiver agency cases. (Care Management Director, Social Worker Case Manager, and Supervisor of Operation Testimony) However, the proposed reduction can not be upheld based on how the Appellant's case compares to other cases. Rather, the reduction can only be upheld if the Appellant's needs can still be met with the reduced hours.

The Care Management Director explained that the Appellant began receiving MI Choice Waiver program services shortly after he and his sister moved to Michigan and the waiver agency initially authorized 56 hours per week because they believed that was what the Appellant had been receiving in the other state. She testified that at the time the reduction was proposed, the Appellant's condition had been stable for about three years and that the reduced hours were sufficient to meet the Appellant's needs. (Care Management Director Testimony) The Supervisor of Operations testified that she is consulted on all reductions, and agreed that 40 hours per week seemed appropriate for the Appellant.

The waiver agency utilizes a person-centered planning process, which includes

continuously updating and revising service and support plans. *Michigan Department of Community Health Minimum Operating Standards for MI Choice Waiver Program Services*, Attachment H, page 1. (Exhibit 1, Attachment E, page 9) The Social Worker Case Manager explained that she periodically reviews cases to be sure that what is authorized is needed. She testified that the Appellant's sister has taken very good care of the Appellant, and acknowledged it is a full time job to be there as a caregiver for the Appellant. The Social Worker Case Manager stated that at the time the reduction was proposed, she was comfortable that 40 hours per week would be okay, noting that the Appellant's condition had been very stable. The Social Worker Case Manager stated that the Appellant's sister said she would have a hard time paying the bills due to the reduction, however, the waiver agency could not continue to authorize the 56 hours per week based on the financial circumstances. (Social Worker Case Manager Testimony)

The Appellant's sister disagrees with the reduction and testified that the Appellant had only been receiving 40 hours per week in the prior state, however, the pay per hour was higher in the prior state so the waiver agency initially authorized 56 hours to balance the payment. She acknowledged that the Appellant's condition had been stable since they moved to Michigan, and noted that she takes excellent care of him, which is time consuming. The Appellant's sister stated that she will have to look for work elsewhere if she is only being paid for 40 hours per week at the current pay rate. Additionally, since the ██████████, notice was issued, the Appellant has been diagnosed with oral cancer. As his condition changes, he will need a feeding tube, additional monitoring and care. (Sister Testimony)

The waiver agency's determination to reduce the Appellant's personal care and homemaking hours to 40 hours per week was appropriate at the time the ██████████, notice was issued. It was uncontested that the Appellant's condition had been stable at that time. The Appellant's sister's testimony indicated that 40 hours was sufficient to meet the Appellant's needs, but 56 hours had been authorized by this waiver agency only to match the payment received in the prior state with a higher hourly rate. The waiver agency's proposed reduction is upheld as based on the information available at that time, 40 hours per week for personal care and homemaking was sufficient to meet the medically necessary needs of the Appellant at that time.

However, it was also uncontested that since the ██████████, notice was issued, the Appellant has been diagnosed with oral cancer. Additional hours may be appropriate as the Appellant's condition changes. The Social Worker Case Manager testified that the Appellant's case status has already been changed to active, which will result in more frequent monitoring. Additionally, the waiver agency can do an early visit if needed. (Social Worker Case Manager Testimony)

**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**.

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

cc:

[REDACTED]

Date Mailed: 10/4/2011

**\*\*\* 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.

