

**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. 2011-50112 EDW  
Case No. 7586814

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Director of Quality, represented the Department of Community Health's Waiver Agency, HHS ██████████ ("Waiver Agency" or "Health Options"). ██████████, Case Manager, and ██████████, Clinical Director, also testified as witnesses for the Waiver Agency. Following the hearing, the record was left open until ██████████.

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for additional Community Living Support (CLS) services through the MI Choice Waiver Program?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old woman and has been diagnosed with hypertension, arthritis, osteoporosis, and hemiplegia/hemiparesis. (Exhibit 1, pages 7, 9-10, 18-19).
2. Appellant is enrolled in and has been receiving MI Choice waiver services since ██████████. (Testimony of ██████████). Appellant is currently receiving 34 hours of CLS services and 6 hours of respite care per week. (Testimony of ██████████; Testimony of ██████████).

3. Health Options is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
4. On ██████████, Appellant, through her representative/care giver, requested an additional 10 hours a week of CLS services. (Testimony of ██████████).
5. On ██████████, HHS sent Appellant a notice that it was denying her request for additional CLS hours. As stated in that notice, “[t]he principal reason(s) for this decision is due to no significant change in functional status and the availability of natural supports to assist with care.” (Exhibit 1, page 2).
6. On ██████████, the Department received Appellant’s request for an administrative 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.

Appellant is claiming services through the Department’s Home and Community Based Services for Elderly and Disabled. 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 Health Options, 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 440.180(b))

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

Here, it is undisputed that the Appellant has at least some need for personal care as Appellant was receiving 34 hours of CLS services and 6 hours of respite care per week when she requested an additional 10 hours of services. That request was denied on the basis that the additional hours were not medically necessary because Appellant had no significant change in functioning and because natural supports were available to assist with care. For the reasons discussed below, this Administrative Law Judge finds that the denial should be affirmed.

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With respect to the first reason given for the denial, the Waiver Agency correctly argued that the most recent assessments of Appellant's functioning status provide that there has been no significant change in her functioning. Appellant was assessed and assigned 40 hours of services (34 CLS and 6 respite care) on ██████████. (Exhibit 1, pages 7-15). Appellant's representative testified that she requested more hours during that assessment, but did not appeal the authorization of only 40 hours. (Testimony of ██████████). Less than three months later, on ██████████ 11, Appellant was again assessed and no significant changes in functioning status were found. (Exhibit 1, pages 16-24; Testimony of ██████████; Testimony of ██████████).

Appellant's representative testified that Appellant does not require around-the-clock care, but more time is needed. (Testimony of ██████████). However, Appellant's representative also testified that, while she had previously asked for additional CLS hours based on Appellant's needs, her requests were denied and Appellant never appealed those denials. Given the stability of Appellant's condition since the authorization of 40 hours of services and the lack of previous challenges to that authorization, this Administrative law Judge finds that the denial of additional hours should be sustained.

Additionally, with respect to the second reason offered for the denial, *i.e.* the availability of natural supports to assist with care, the Waiver Agency noted that Appellant's other children are also available to assist Appellant. Appellant's daughter/representative does not dispute that her siblings exist and could help, but she also asserts that they have not helped in the past and unlikely to help in the future. (Testimony of ██████████). Nevertheless, the Waiver Agency is required by policy to look to Appellant's informal or natural supports. (Exhibit 1, page 4). Here, Appellant's representative offers no reason, medical or otherwise, as to why additional natural supports are unavailable to assist with Appellant's care.

Appellant's need for at least some care services is not disputed in this case, but the MI Choice Program is not intended to satisfy all her requests and she is not entitled to services beyond those that are medically necessary. Moreover, the burden is on Appellant to demonstrate by a preponderance of evidence that the denial of her request for additional services was in error. Given the various assessments of Appellant indicating no change in her medical condition, as well as the potential availability of additional informal supports, Appellant has failed to meet her burden of proof. Accordingly, the denial of additional services is upheld as 40 hours per week of CLS and respite care was sufficient to meet the medically necessary needs of the Appellant based on the information available at that time.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's request for additional CLS services.

**IT IS THEREFORE ORDERED** that:

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

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Steven J. Kibit  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 10/26/2011

**\*\*\* NOTICE \*\*\***

The Michigan Administrative Hearing System 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 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.