

**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. 2011-51774 EDW
Case No. 95034855

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 appeared and testified on her own behalf. ██████████ also testified on Appellant's behalf. ██████████, ██████████ supervisor/social worker, represented the Department of Community Health's Waiver Agency, the Area Agency on Aging ██████████ ("Waiver Agency" or "AAA"). ██████████, social worker/care manager, ██████████, registered nurse/care manager, and ██████████, registered nurse/supervisor, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce Appellant's 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 arthritis, osteoporosis, depression, chronic fatigue syndrome, fibromyalgia, and obsessive-compulsive disorder. (Exhibit 2, pages 1, 8-9).
2. Appellant is enrolled in and has been receiving MI Choice waiver services through AAA. Specifically, Appellant had been receiving 12 hours a week of homemaker services, 200 miles of transportation per month, home-delivered meals, medication management, an emergency response system, and incontinence supplies. (Testimony of ██████).
3. AAA 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 ██████████, AAA completed a reassessment of Appellant's services and determined that Appellant's needs could be met through a decreased amount of homemaker services. (Exhibit 2, pages 1-16; Testimony of ██████████).
5. On ██████████, AAA sent Appellant a notice that it was reducing her homemaker services. The effective date of the reduction was identified as ██████████. (Exhibit 5, page 1).
6. The notice also stated that the "reason for this change is following a review utilizing the Care Plan Worksheet, it was determined that based on your level of service need, hours would be reduced. The Worksheet indicated that 15 hours would be sufficient to meet your needs but we are allowing a total of 6 hours weekly." (Exhibit 5, page 1).
7. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 3, pages 1-12).

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. 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 AAA, 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 and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 C.F.R. § 440.230.

Here, Appellant’s homemaker services were reduced to 6 hours per week on the basis that only 6 hours were medically necessary. It is undisputed that at least 1 hour of the 6

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hours of services allocated to Appellant each week is used as travel time. Appellant must travel into ██████████ for at least some of her shopping and errands, and that trip consists of at least 1 hour round-trip. (Testimony of Appellant; Testimony of ██████████). With respect to the remaining 5 hours, Appellant testified that she requires much more time to meet her needs. (Testimony of Appellant).

However, Appellant does not appear to dispute much of the assessment report or care plan worksheet. For example, Appellant did testify regarding her needs with respect to housework and laundry, but her testimony does not contradict the reassessment report or care plan worksheet used by AAA for those tasks. (Testimony of Appellant; Exhibit 1; Exhibit 2). Both Appellant and ██████████ testified regarding Appellant's need for assistance with cleaning and the limited areas that were to be cleaned. (Testimony of Appellant; Testimony of ██████████). Appellant also testified that her house is cleaner and more organized now than it was at the time of the assessment, which means greater areas have to be cleaned now (Testimony of Appellant), but this Administrative Law Judge is limited to reviewing the Waiver Agency's decision based on the information available at the time of the decision. Furthermore, with respect to laundry, both Appellant and ██████████ testified that Appellant can provide some minor assistance with respect to laundry, but her needs in that area are extensive given her incontinence and she requires significant assistance. (Testimony of Appellant; Testimony of ██████████).

Appellant also testified that she gets half of her meals delivered and does not need her caregivers to prepare the rest. (Testimony of Appellant). Similarly, Appellant testified that her caregivers have never provided assistance with taking medications, transferring, locomotion, dressing or eating. (Testimony of Appellant). Therefore, while Appellant testified during the hearing that she would like greater assistance in these areas if it is available, there is no suggestion that she has a need for more assistance with those tasks or that she is even challenging the determination by the Waiver Agency. (Testimony of Appellant).

Instead, Appellant primarily argues that she requires much more time than allocated because of her need for assistance with shopping and errands. (Testimony of Appellant). According to Appellant, that hour of travel time identified by the Waiver Agency only accounts for the time it takes her to get to the edge of ██████████ and back from the edge of ██████████, and that it does not encompass shopping and travel time within that city. (Testimony of Appellant). Appellant also testified that, within ██████████, she has to make multiple stops and travel across the city. (Testimony of Appellant). In total, Appellant seeks 6 hours a week of assistance just for shopping and errands. (Testimony of Appellant).

However, while Appellant generally testified that she needs more time for assistance with shopping and errands because of the multiple stops she has to make and the travel time those multiple stops involved, she failed to identify any specific reasons for a need for more time. Appellant was asked to describe a typical shopping trip and the multiple stops she has to make, but she was completely unable to do so. (Testimony of Appellant). Appellant also conceded in her testimony that she does not make shopping

lists (Testimony of Appellant) and there is no suggestion that her shopping trips are as efficient as they could be.

Moreover, during her incomplete testimony regarding a typical shopping trip, Appellant identified tasks and stops that fall outside of what the assistance was authorized for. For example, Appellant included a trip to the Humane Society and times when she is eating fast food as part of the time necessary for assistance with shopping and errands. (Testimony of Appellant). However, as stated on the Care Plan Worksheet submitted by AAA, assistance with shopping and errands should be “[l]imited to occasional trips in the local area to shop for food, medical necessities and household items required specifically to health and maintenance of the client.” (Exhibit 1, page 1).

The burden is on Appellant to demonstrate by a preponderance of the evidence that the reduction in services was in error and Appellant has failed to meet that burden in this case. Appellant focuses her argument on the length of time she requires for assistance with shopping and errands, but she was unable to provide specific testimony in support of that argument. Moreover, to the extent Appellant asserts that she requires greater assistance with other tasks, her testimony is actually consistent with AAA’s findings and assessment. Accordingly, the reduction made by the Waiver Agency should be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly reduced Appellant’s services through the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

The Department/Waiver Agency’s decision is **AFFIRMED**.

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

cc:

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Date Mailed: 11/14/2011

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***** 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.