

**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. 2012-1554 EDW
Case No. 91684397

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 his own behalf. ██████████, Waiver Program Director, represented the Department of Community Health's Waiver Agency, ██████████, Inc. ("Waiver Agency" or "██████████"). ██████████, Social Worker, ██████████, Program Manager, and ██████████, Social Worker, 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 man and has been diagnosed with congestive heart failure, hypertension, peripheral vascular disease, a stroke, seizure disorder, anxiety, and diabetes mellitus. (Exhibit 1, pages 3, 10-11).
2. Senior Services 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.
3. Appellant is enrolled in and has been receiving MI Choice waiver services through Senior Services. Specifically, Appellant had been receiving 7 hours of personal care services per day. (Exhibit 1, page 22; Testimony of Grib).

4. On ██████████, ██████████ staff completed a reassessment of Appellant's services and determined that Appellant's needs could be met through a decreased amount of services. (Exhibit 1, page 2; Exhibit 3, pages 3-19; Testimony of ██████████).
5. On ██████████, ██████████ sent Appellant a notice that it was reducing his personal care services. The effective date of the reduction was identified as ██████████. (Exhibit 1, pages 21-23). Specifically, Appellant's personal care services were reduced to 6 hours a day. (Exhibit 1, pages 21-22; Testimony of ██████████).
6. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 2, page 1).

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 MORC, 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))

Here, it is undisputed that the Appellant has a need for some services and he has continuously been receiving personal care hours. However, 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.

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The Waiver Agency argues that the 7 hours of personal care services Appellant was receiving per day are not medically necessary and that his needs can be met through 6 hours a day of personal care services. In support of that determination, ██████████ testified that, during the entire reassessment she conducted on ██████████, Appellant's caregiver was lying on the couch instead of working. (Testimony of ██████████). ██████████ also testified that the home visit took approximately 1 hour and 15 minutes, and that the caregiver did not perform any services during that time despite being scheduled and paid to work. (Testimony of ██████████).

Appellant does not dispute that his caregiver was present, but not working, during the home visit. (Testimony of Appellant). According to Appellant, he asked his caregiver to be nearby and observe his interaction with ██████████. (Testimony of Appellant). Appellant further testified that his caregiver provides him with significant help, including helping him with his insulin injections. (Testimony of Appellant).

However, even if Appellant had asked his caregiver to observe the home visit, the fact remains that she did not provide him with any personal care services during that assessment despite being scheduled and paid for that time. Moreover, Appellant also testified that his caregiver got all of her work done that day even though she spent over an hour observing the home visit. (Testimony of Appellant). Given that the caregiver can get her work done in less than 6 hours per day, authorizing 7 hours per day of personal care services is not necessary.

Additionally, it appears that Appellant's caregiver has also been assisting him with his insulin, which she is not authorized to do. According to ██████████, no time was allocated for such assistance because Appellant received training on providing himself with injections and a nurse comes to his home on a weekly basis. (Testimony of ██████████).

Given that the caregiver should not be assisting Appellant with his insulin injections and that she can complete her work in less than 6 hours per day, the Waiver Agency's decision to reduce Appellant's personal care services to 6 hours a day must be sustained as it is reflective of Appellant's medically necessary need for assistance.

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's decision is AFFIRMED.

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

cc:



Date Mailed: 11/23/2011

***** 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.