

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS 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:

Docket No. 2012-62326 EDW

██████████ Case

No. ██████████

Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ Appellant, appeared on her own behalf. ██████████, Appellant's husband, appeared as a witness for Appellant.

██████████ Community Services Director, represented the Department's MI Choice Waiver Agency, the Valley Area Agency on Aging, (Waiver Agency or Valley AAA). ██████████ ██████████, Supports Coordinator, Social Worker, appeared as a witness on behalf of the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's respite hours from 24 to 12 hours per week?

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 Medicaid beneficiary, born ██████████ (Exhibit A, p 4)
2. Appellant is currently enrolled in the MI Choice Waiver Program. (Testimony).
3. Appellant's diagnosis include: Cerebellar Ataxia NEC, Anxiety, Depression, Diabetes Mellitus, Left-Sided Hemiparesis, GERD, Insomnia, and Increased Heart Rate. (Exhibit A, pp 9-10).

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4. The Appellant resides in a small 2 story home in Flint with her husband, her son, her daughter, and her grandson. Appellant's husband is her primary caregiver; however, he is also disabled due to a back injury. Appellant and her husband also have a [REDACTED] year old son who has Down's Syndrome and requires a lot of interaction and supervision. Appellant's daughter is her paid caregiver through Helping Hands. (Exhibit A, pp 4-6 Testimony).
5. On [REDACTED] a Waiver Agency social worker and nurse met with Appellant in her home and performed a full reassessment. (Exhibit A, pp 4-17).
6. During the reassessment the Waiver Agency social worker and nurse asked the Appellant questions, observed her abilities and consulted Appellant's other medical documentation. (Exhibit A, pp 4-17; Testimony).
7. Based on the [REDACTED] reassessment, the Waiver Agency determined that a reduction in Appellant's respite hours by 12 hours per week was appropriate according to the MI Choice Waiver Program Operating Standards. (Exhibit A, p 5; Testimony).
8. On [REDACTED] the Waiver Agency provided Appellant with notice of the reduction in her respite hours by 12 hours per week (Exhibit A, p 1).
9. On [REDACTED] the Appellant requested a hearing to contest the reduction of respite hours. (Exhibit 1). In her request, Appellant stated:

I am severely handicapped. I need assistance with preparation of meals, elimination assist, dressing, bathing, and I also want assistance with getting out of my house for outings that requires more than two hours a day. Two hours a day just isn't enough help with my condition. (Exhibit 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.

This 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 (formerly HCFA) to the Michigan Department of Community Health

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(Department). Regional agencies, in this case an Area Agency on Aging (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 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) 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).

The MI Choice Waiver Program list services available under the waiver program and addresses the standards expected for each service. The Operating Standards include respite services.

The MI Choice Waiver defines Respite services as follows:

4.1.D. RESPITE CARE

Respite Care services are provided to participants unable to care for themselves and are furnished on a short-term basis due to the absence of, or need of relief for, those individuals normally providing care for the participant. Services may be provided in the participant's home, in the home of another, or in a Medicaid-certified hospital or a licensed Adult Foster Care facility. Respite care does not include the cost of room and board, except when provided as part of respite care furnished in a facility approved by MDCH that is not a private residence.

Services include:

- Attendant Care (participant is not bed-bound), such as companionship, supervision, and assistance with toileting, eating, and ambulation.
- Basic Care (participant may or may not be bed-bound), such as assistance with ADLs, a routine exercise regimen, and self-medication.

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The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. 42 CFR 440.230. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

The Appellant was receiving 24 hours per week of respite services through the MI Choice Waiver Program. The Appellant bears the burden of proving, by a preponderance of evidence, that the 24 respite hours per week are medically necessary.

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██████████ Supports Coordinator, Social Worker, testified that she completed the reassessment with Appellant on ██████████. Based on the assessment, ██████████ concluded that 2 hours per day of respite would be sufficient for Appellant's needs. ██████████ pointed out that Appellant does not get out very often and getting her out of the house was one of the reasons she was receiving 4 hours per day of respite. ██████████ indicated that the number of hours could be revisited at some point in the future if Appellant's condition improved such that she could get out of the house more often. ██████████ testified that Appellant's daughter is her paid caregiver and also lives in the home with Appellant, so she is also able to provide informal supports. ██████████ also indicated that Appellant's husband, while disabled, is also able to provide Appellant informal supports.

The Appellant testified that she needs 4 hours per day of respite given her conditions. ██████████ Appellant's husband, testified that Appellant really needs the additional hours back. ██████████ indicated that Appellant cannot even go to the bathroom by herself. He indicated that he has a bad back and has had back surgery in the past and that he is unable to provide Appellant very much assistance. ██████████ also testified that he and Appellant have a ██████████ year old son with Down's Syndrome who also requires a lot of support. ██████████ indicated that while their daughter lives with them, she also has her own child to take care of and her own life to attend to.

This ALJ finds that the Waiver Agency properly authorized 12 hours per week as an appropriate number of respite hours to meet the medically necessary needs of Appellant. The Appellant failed to establish by a preponderance of the evidence that 24 respite hours per week were medically necessary. It is clear that Appellant has significant medical issues and requires significant care, but Appellant also has a husband and a daughter who are able to provide her with significant informal supports. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional respite services cannot be authorized for the Appellant based upon the evidence of record. *42 CFR 440.230.*

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly reduced the Appellant's respite hours to 12 per week.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is **AFFIRMED**.



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/07/2012

***** 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.