

**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:

Docket No. 2012-42447 EDW

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's son, appeared and testified on behalf of the Appellant.

██████████, Director of Long Term Care Services, represented the Department's Waiver Agency, ██████████ Area Agency on Aging. ██████████, R.N., Appellant's Care Manager with ██████████ Area Agency on Aging, appeared as a witness for the Department's Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's MI Choice waiver services?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary who has been enrolled in the MI Choice Waiver program since ██████████ (Exhibit 18 and testimony).
2. The Appellant is an ██████ year-old woman (██████████) with Alzheimer's disease, anxiety, hypertension, and osteoarthritis. (Exhibits 1, 5, 17 and testimony).
3. The Appellant lives with her son ██████████. The Appellant has informal supports available to her. Her son takes care of her when he is not at work.

(Testimony).

4. On [REDACTED], a Reassessment was conducted for the Appellant by the Waiver Agency in the Appellant's home. (Exhibit 5).
5. On [REDACTED], the Waiver Agency sent the Appellant a Notice stating her homemaking, personal care, and in-home respite care would be reduced to 3 hours per day five days per week, (one hour each), effective [REDACTED] (Exhibit 14).
6. On [REDACTED], MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 16).

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 (Department). Regional agencies, in this case the Detroit Area Agency on Aging (DAAA), 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 *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2012, provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

* * *

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections.

* * *

4.1.B. HOMEMAKER

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance) provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator.

4.1.C. PERSONAL CARE

Personal Care services encompass 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 participant) or cueing to prompt the participant to perform a task. Personal Care services are provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law.

Services provided through the waiver differ in scope, nature, supervision arrangement, or provider type (including provider training and qualifications) from Personal Care services in the State Plan. The chief differences between waiver coverage and State Plan services are those services that relate to provider qualifications and training requirements, which are more stringent for personal care provided under the waiver than those provided under the State Plan.

Personal Care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. These services may also include

assistance with more complex life activities. The service may include the preparation of meals but does not include the cost of the meals themselves. When specified in the plan of service, services may also include such housekeeping chores as bed making, dusting, and vacuuming that are incidental to the service furnished or that are essential to the health and welfare of the participant rather than the participant's family. Personal Care may be furnished outside the participant's home.

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.

There is a 30-days-per-calendar-year limit on respite services provided outside the home.

The issue appealed is whether the Waiver Agency properly reduced the program service hours. Appellant's son appealed the reduction in hours and stated the Appellant needs 24 hour care. Appellant's son wants in-home respite for the Appellant so there will be someone with his mother while he is at work.

The Waiver Agency's witness ██████████ testified that an in-person reassessment for MI Choice Waiver services review was conducted with the Appellant on ██████████ (See Exhibit #5). ██████████, a registered nurse explained that as a result of the reassessment the number of waiver hours were to be reduced to three hours per day five days per week. Appellant was receiving homemaking services, personal care, and in-home respite care.

██████████ stated that Appellant needed limited assistance to get out of bed and for in-home transfers, such as transfers to the toilet. Appellant also was dependent for meal prep and needs supervision for bathing and dressing. ██████████ determined, based on the reassessment, that the Appellant's needs could be met with three hours per day five days a

week of a combination of homemaking, personal care, and in-home respite services. (Exhibit 18).

██████████ did acknowledge that the Appellant required 24 hour supervision, but not 24 hour personal care or homemaking services. ██████████ stated that having someone to sit with the Appellant while the primary caregiver is at work is outside the scope of the MI Choice Waiver Program. ██████████ referenced Exhibits 8-10, portions of Attachment K to their contract with Michigan Department of Community Health to provide MI Choice Waiver Services, to show that in-home respite services are limited to provide short-term relief for the caregiver, but not to provide someone to sit with the Appellant while the caregiver is at work.

The Appellant's son ██████████ stated that he goes to work each day from ██████████ ██████████ stated he is asking for help while he is at work. He stated his mother can not be left alone and he needs some one to sit with her while he is at work. Mr. ██████████ states that he is with the Appellant and takes care of her the rest of the day while he is not at work. Mr. ██████████ stated his mother has gotten worse in ██████████ and his sister who used to help with her passed away recently so there is no one else who can help out. Mr. ██████████ stated he is asking for additional in-home respite because he can't leave the Appellant by herself in the home.

The Waiver Agency stated that the three hours per day of combined homemaking, personal care, and in-home respite are adequate to meet the Appellant's needs. The Waiver agency elaborated that what the Appellant's son was requesting was someone to sit with the Appellant while he was at work. The Waiver Agency said that this is not a MI Choice covered service and that was the reason why it denied additional MI Choice service hours for the Appellant. This Administrative Law Judge agrees. The policy in the Medicaid Provider Manual that is quoted above supports this position. Having someone present with or to check on the Appellant for monitoring purposes is not a MI Choice covered service. As such, the MI Choice Waiver Agency's denial of an increase of in-home respite care was proper.

The Waiver Agency provided sufficient evidence that its authorization of homemaking, personal care hours, and in-home respite was proper.

[REDACTED]
Docket No. 2012-42477 EDW
Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly authorized the Appellant's MI Choice waiver services.

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5-22-12

***** 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