

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

\_\_\_\_\_ /

**Docket No.** 2012-45526 EDW

**Case No.** ██████████

**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's ██████████ appeared and testified on Appellant's behalf. Appellant and ██████████, a ██████████, also testified as witnesses. ██████████ Community Services Director, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the Valley Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████ Supports Coordinator, and ██████████, a registered nurse, 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 an ██████████ and has been diagnosed with chronic obstructive pulmonary disease (COPD), diabetes, lumbar degenerative disc disease, osteoarthritis in her right knee, congestive heart failure, coronary heart disease, hypertension, transient ischemic attack (TIA), and anxiety. ██████████
2. 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.
3. Appellant is enrolled in and has been receiving MI Choice waiver services through the Waiver Agency, including 8 hours of personal care services

and 4 hours of homemaker services per week. The caregiver would work from 11:30 a.m. to 2:30 p.m., Tuesday through Friday. [REDACTED]  
[REDACTED].

4. On [REDACTED] AAA staff completed a reassessment of Appellant's services. [REDACTED]
5. Subsequently, AAA determined that Appellant's needs could be met through a decreased amount of services. Accordingly, the Waiver Agency decided to terminate her 4 hours of homemaker services per week and to reduce Appellant's personal care services. In total, Appellant was left with 7 hours of personal care services per week. The caregiver was now to work 11:30 a.m. to 1:30 p.m. on Tuesday, Thursday and Friday, with an additional extra hour of work on Thursday. [REDACTED]
6. On [REDACTED] the Waiver Agency sent Appellant a notice that it was terminating her homemaker services. [REDACTED]
7. On [REDACTED] the Department received Appellant's request for an administrative hearing. [REDACTED]

### **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 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))

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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))

Here, it is undisputed that the Appellant has a need for some services and she has continuously been receiving care. 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 CFR 440.230.

As discussed above, Appellant was receiving 8 hours of personal care services and 4 hours of homemaker services per week prior to the reassessment of Appellant’s

services. Following the reassessment, the Waiver Agency determined that Appellant's needs could be met through a decreased amount of services and it decided to terminate her 4 hours of homemaker services per week while reducing her personal care services by 1 hour a week.

During the hearing, AAA's witnesses testified that they reduced Appellant's services because of information provided to them by Appellant. For example, [REDACTED] testified that Appellant told her that Appellant can make meals on her own, including microwaving frozen meals and making breakfast, and that her family assists her with meal preparation on days her caregiver is not there. [REDACTED] Similarly, [REDACTED] testified that she was told Appellant did not need so much time for housekeeping while [REDACTED] testified that he was told the only physical assistance Appellant required was getting in-and-out of the shower. [REDACTED]  
[REDACTED]

As a preliminary matter, this Administrative Law Judge would note that, while there are two types of services at issue in this case, *i.e.* homemaker services and personal care services, those services are very similar and the parties considered them together. With respect to those services, the Medicaid Provider Manual (MPM) states:

#### **4.1.B. HOME MAKER**

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, *i.e.*, 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 person) or cueing to prompt the participant to perform a task. Personal Care services may be 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

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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.

(MPM, MI Choice Waiver Chapter  
January 1, 2012, pages 9-10)

AAA's representative testified that, while it terminated homemaker services while reducing Appellant's personal services, it considered Appellant's needs as a whole and found that those needs could be met through the reduced personal care hours. Beyond that, it did not distinguish between the two types of services and appeared to assert that the same type of assistance could be fall other either type of Medicaid service.

██████████ Similarly, Appellant's representative was primarily concerned with how many assistance hours were authorized, and not the exact nature of those services. ██████████ Accordingly, this Administrative Law Judge will also examine the two types of services together and consider the reduction in assistance, from 12 hours a week to 7 hours a week, as a whole.

Regarding the reduction in services, Appellant argues that the Waiver Agency erred in reducing Appellant's services. According to Appellant's ██████████ Appellant has a hard time moving around and requires significant assistance with tasks such as housekeeping and getting in-and-out of cars. ██████████ also testified regarding Appellant's need for assistance with dressing, bathing, and preparation. ██████████. Appellant is a diabetic and, according to ██████████ that condition complicates the meals the worker prepares for Appellant. ██████████

The reduction has been implemented in this case and ██████████ testified that, since the reduction took effect, Appellant is missing meals or her meals have suffered. ██████████. Appellant and Appellant's ██████████ also testified that the reduction in services has led to tasks not getting done, such as the caregiver taking Appellant to the bank, grocery store, hair appointments, and doctor's appointments. ██████████

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Appellant's witnesses primarily attribute the reduction in services to inaccurate information provided to AAA by Appellant during the assessment. [REDACTED] expressly testified that Appellant was improperly alone during the reassessment and that Appellant reported some wrong answers. [REDACTED] For example, [REDACTED] testified that Appellant failed to report her falls and that, despite Appellant's statements to the contrary, Appellant's [REDACTED] does not help out around the house. [REDACTED] According to [REDACTED] Appellant's answers cannot be trusted because she [REDACTED] According to Appellant's [REDACTED] Appellant's answers cannot be trusted because she has memory problems. [REDACTED]

Appellant bears the burden of providing by a preponderance of the evidence the Waiver Agency erred when reducing her services. Given the record and evidence in this case, Appellant has failed to meet that burden. As noted by the Waiver Agency's representative, some of the assistance identified by Appellant, such as transportation to doctor's appointments, are not a covered Medicaid services.

Moreover, while Appellant's witnesses testified regarding the effect the reduction in hours has had on Appellant's meals in light of Appellant's diabetes, Appellant has always been able to reheat meals or microwave frozen meals, and that ability is unaffected by her diabetes, even if individual meals might change. Similarly, it is undisputed that Appellant has a small apartment that does not take long to clean.

With respect to Appellant's representative's main argument regarding the alleged inaccuracy of information supplied by Appellant, there is no record or evidence of any diagnosis that would preclude Appellant from accurately answering questions during assessment. The Waiver Agency is therefore entitled to rely on those answers in making its decision. It did so here and, in light of the information available at the time, its decision to reduce Appellant's services should be affirmed.



**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**.

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

cc:



Date Mailed: 7-9-2012

**\*\*\* 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.