

**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. 2012-45528 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 appeared and testified on her own behalf. ██████████ Appellant's ██████████ also testified on Appellant's behalf. ██████████ 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 ██████████, 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 ██████████ and has been diagnosed with multiple sclerosis. ██████████
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 30 hours of unskilled respite services per week. The caregiver would work from 9:00 a.m. to 3 p.m., Monday through Friday. ██████████

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4. On [REDACTED], AAA staff completed a reassessment of Appellant's services. [REDACTED]
5. Subsequently, AAA and Appellant determined that Appellant's needs could be met through a decreased amount of services and decided to reduce her unskilled respite hours by 10 hours a week. The caregiver was to come 9:00 a.m. to 11:00 a.m. and 1 p.m. to 3 p.m., Monday through Friday. [REDACTED]
6. Appellant agreed with the changes at the time the decision to reduce hours was made. [REDACTED]
7. On [REDACTED], the Waiver Agency sent Appellant a notice that it was reducing her respite hours. [REDACTED]
8. The reduction was implemented on [REDACTED]
9. On [REDACTED] the Department received Appellant's request for an administrative hearing. [REDACTED]
10. According to Appellant's testimony during the hearing, while she agreed with the reduction at the time of the reassessment and the decision to reduce, her medical conditions have worsened since that time and she can no longer be left alone [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))

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

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the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Following the reassessment, the Waiver Agency determined that Appellant's needs could be met through a decreased amount of services and that her unskilled respite hours should be reduced by 10 hours a week. ██████████ Moreover, as discussed above, Appellant agreed with the changes at the time the decision to reduce hours was made. ██████████

Appellant also testified that, while she agreed with the reduction at the time of the reassessment and decision to reduce, her medical conditions have worsened since that time and she can no longer be left alone. ██████████ Accordingly, Appellant filed this appeal. ██████████

However, this Administrative Law Judge's jurisdiction is limited to reviewing the Waiver Agency's decision in light of the information available at the time it made that decision. At that time, even Appellant agreed that she required fewer services than she was receiving based on her medical condition and needs. Therefore, the Waiver Agency's decision must be affirmed.

To the extent Appellant's situation has changed and she requires more assistance, she must request those additional services from AAA. AAA's representative stated during the hearing that Appellant can do so at any time.


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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: 7.6.2012

***** 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.