

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. 2012-50624 EDW
Case No. [REDACTED]

[REDACTED]

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 [REDACTED]. Appellant appeared and testified on her own behalf.

[REDACTED] RN Supervisor, represented the Department's waiver agency, Senior Resources, Region 14 Area Agency on Aging (Region 14 AAA or Waiver Agency), and testified on the Waiver Agency's behalf. [REDACTED] Social Work Case Manager, and [REDACTED] RN Supports Coordinator, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly deny Appellant's request for additional personal care hours?

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 Department contracts with Region 14 AAA to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. Region 14 AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a [REDACTED] year-old woman, born [REDACTED]. Appellant's diagnoses include arthritis, and curvature of the spine. Appellant suffered from polio as a child and has very weak legs. Appellant has had hip

replacements, knee replacements, and shoulder replacements.
(Testimony)

4. The Appellant lives alone in a small, one-bedroom apartment in a senior housing community. Appellant's family provides informal supports through social outings and also does Appellant's shopping and errands. (Exhibit A)
5. At an [REDACTED] reassessment, Appellant requested an additional personal care hour at night during the week and an additional personal care hour at night during the weekends. Appellant is currently receiving 5 personal care hours per day Monday through Friday, scheduled 2 hours in the morning and 3 hours in the evening. Appellant also receives 4 personal care hours on Saturday and Sunday, scheduled 2 hours in the morning and 2 hours in the evening. (Exhibit A, Testimony)
6. On [REDACTED] Region 14 AAA notified Appellant that it had determined that the additional hours Appellant requested were not medically necessary. (Exhibit A, Testimony).
7. On [REDACTED] a home visit was made to evaluate Appellant's needs and another reassessment was conducted, because there had been a change in the RN Supports Coordinator since the April 16, 2012 assessment. Region 14 AAA again determined that Appellant's current hours were adequate to meet her needs. (Exhibit A, Testimony)
8. On [REDACTED] the Michigan Administrative Hearing System received a request for hearing from the Appellant. (Exhibit 1). In her request for hearing, Appellant stated:

To see if I can get 1 extra hour of help at night so that my aids may be able to finish what needs to be done. Also the same hours as I get during the week I need on the weekend. (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 the Region 14 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 Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, provides in part:

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections. [p. 9].

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.

Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2012, p 10

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.

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The Appellant requested that she receive an additional hour of personal care at night during the week and an additional hour at night on the week ends. Appellant's request was denied. The Appellant appealed the denial, and thus, bears the burden of proving, by a preponderance of evidence that she is entitled to the additional hours of personal care that she is requesting.

██████████ RN Supervisor at Region 14 AAA, testified that following assessments completed on ██████████ and ██████████ the Waiver Agency determined that the personal care hours Appellant was receiving were adequate to meet her needs. ██████████ testified that Waiver Agency workers discussed with Appellant alternate ways that her needs could be met, such as having her aids prepare more meals ahead of time, and returning to Appellant's apartment to do other chores while Appellant's laundry was being done. ██████████ indicated that Appellant lives in a small, one-bedroom apartment (approximately 500 square feet) and that the Waiver Agency also determined that Appellant's desire to have the apartment vacuumed on a daily basis was not medically necessary.

Appellant testified that she needs additional hours in the evening because the aid who comes in the morning only has time to get Appellant up, bathed and dressed, and does not have time to do any other chores or meal preparation. As such, all chores and meal preparation are left for the afternoon aid, who does not have enough time to get everything done. Appellant also testified that she needs the same number of hours on the weekends as she does during the week.

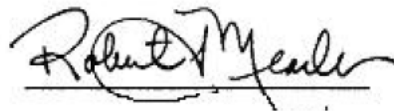
This ALJ finds the MI Choice Waiver Agency properly denied the Appellant's request for additional personal care hours. The Appellant failed to establish by a preponderance of the evidence that the additional personal care hours were medically necessary. The Waiver Agency provided reasonable alternatives that Appellant could utilize with her aids to achieve the goals that she would like and Appellant also has family who can provide additional informal supports. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional personal care services cannot be authorized for the Appellant based upon the evidence of record. 42 CFR 440.230.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly denied Appellant's request for additional personal care hours.

IT IS THEREFORE ORDERED that:

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



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

cc:



Date Mailed: 8/29/2012

***** 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.