

**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. 2012-53374 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's daughter, appeared on behalf of Appellant.

██████████ Community Services Director, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the Valley Area Agency on Aging, (Waiver Agency or Valley AAA).

ISSUE

Did the Waiver Agency properly change Appellant's 36 respite hours per week to 26 personal care 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 an ██████████ old Medicaid beneficiary, born ██████████ (Exhibit A, p 3)
2. Appellant is currently enrolled in the MI Choice Waiver Program. (Testimony).
3. Appellant's diagnosis include: Dementia, Hypertension, Arthritis, Urinary Obstruction, Joint Replaced (Hip ██████████), Esophageal Reflux, and Atrial Fibrillation. (Exhibit A, pp 8-9).
4. The Appellant lives alone in his own home. Appellant's daughter is his primary caregiver. Appellant's daughter lives nearby and can help in an

emergency, but she also works 6 days per week. Appellant has no other informal supports. (Exhibit A, pp 3-5, 16; Testimony).

5. On ██████████ a Waiver Agency social worker and nurse met with Appellant in his home and performed a full reassessment. (Exhibit A, pp 3-16).
6. During the reassessment the Waiver Agency social worker and nurse asked the Appellant questions, observed his abilities and consulted Appellant's other medical documentation. (Exhibit A, pp 3-16; Testimony).
7. Following the ██████████ reassessment, the Waiver Agency determined that the hours Appellant was receiving were improperly categorized as respite hours, so the hours were changed to personal care hours. It was also determined that Appellant's needs could be met with a reduction in Appellant's hours by 10 hours per week. (Exhibit A, p 15; Testimony).
8. On ██████████ the Waiver Agency provided Appellant with notice of the reduction in his personal care hours by 10 hours per week (Exhibit A, p 2).
9. On ██████████ the Appellant's daughter requested a hearing to contest the reduction of personal care hours. (Exhibit 1). In her request, Appellant's daughter stated, in part:

He is homebound; he is unable to cook, or clean, he is unable to do his own laundry or shop for groceries. These aides take him for walks, drive him to Dr's appointments, and helps while he showers, allowing him to remain in his home of 84 years. He also depends on these aides for companionship, and I am concerned if he loses these 10 hours he will need to move to a home. (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

Docket No. 2012-53374-EDW
Hearing Decision & Order

(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 Personal Care services as follows:

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.

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.

*Michigan Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2012, Pages 10-11*

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 36 hours per week of respite/personal care services through the MI Choice Waiver Program. The Appellant bears the burden of proving, by a preponderance of evidence, that the 36 respite/personal care hours per week are medically necessary.

The Waiver Agency representative testified that following the completion of a full reassessment on ██████████ a supervisory audit was also completed. During the audit, it was determined that Appellant's hours had previously been misclassified as "respite hours" when they were really "personal care hours". The representative testified that this change did not affect in any way the services Appellant was receiving. However, the representative also testified that during the audit it was determined that Appellant's needs could be met with 26 personal care hours per week, scheduled 7:00-9:00 am and 4:00-6:00 pm Monday through Saturday, and 4:00-6:00 pm on Sundays.

Docket No. 2012-53374-EDW
Hearing Decision & Order

Appellant's daughter testified that Appellant has been hospitalized twice since his hours were reduced back in [REDACTED]. Appellant's daughter also testified that she now stays with Appellant at all times when she is not working, including overnight. Appellant's daughter indicated that Appellant is okay on his own for a couple of hours at a time, but that the reduction in hours has been very difficult on her and Appellant. Appellant's daughter testified that she now has to work fewer hours so that she can be with Appellant more often. Appellant's daughter did indicate that she lives and works close by and is available in an emergency if her father needs assistance. Appellant's daughter testified that she fears she will have to place Appellant in a home if the hours are not reinstated. Appellant's daughter works Monday through Saturday from 6:30 am to 11:30 am. On Wednesday, Appellant's daughter works from 6:30 am until 5:00 pm.

This ALJ finds that the Waiver Agency properly authorized 26 hours per week as an appropriate number of personal care hours to meet the medically necessary needs of Appellant. The Appellant failed to establish by a preponderance of the evidence that 36 personal care hours per week were medically necessary. It is clear that Appellant has significant medical issues and requires significant care, but Appellant also has a daughter who is able to provide him with significant informal supports. Appellant also has personal care services in his home for 4 hours per day 6 days per week, and 2 hours per day on the seventh day. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional personal care hours 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 personal care hours to 26 hours per week.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for James Haveman Jr., Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/13/2012

***** 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.