

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2012-56996 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.* and upon the Appellant's request for a hearing.

After due notice, this hearing was held on ██████████ ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. ██████████ registered nurse, represented the Department of Community Health's Waiver Agency, the Detroit Area on Aging ("Waiver Agency" or "AAA"). ██████████ director of long term care at AAA, was also present during the hearing but did not participate.

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 ██████ year-old woman who has been diagnosed with dementia, hypertension, arthritis, osteoporosis, and hemiplegia. (Exhibit A, pages 1, 7).
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 has been enrolled in and receiving MI Choice waiver services through AAA, including 21 hours per week of personal care and homemaker services. The services were provided 3 hours a day, 7 days a

week. (Testimony of Lester; Testimony of Basil).

4. On ██████████ AAA staff completed a reassessment of Appellant's needs and services. (Exhibit A, pages 1-13).
5. Based that reassessment, the Waiver Agency found that Appellant's services could be reduced from 3 hours a day, 7 days a week, to 3 hours a day, 5 days a week. (Testimony of Basil).
6. On ██████████ AAA sent Appellant a written notice regarding the changes in her services. The changes were to be effective ██████████ (Exhibit 2, pages 4-5).
7. On ██████████ the Department received a Request for Hearing regarding the reduction of services in this case. (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.

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).]

Types of services that may be offered include:

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).]

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

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, *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 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, April 1, 2012, pages 9-10.]

As described in the above policy, the two types of services in this case are very similar and have some overlap. Consequently, the parties considered them together and identified the issue in this case as a reduction of services from 21 hours a week to 15 hours a week. Put another way, the change was from services 3 hours a day, 7 days a week, to 3 hours a day, 5 days a week.

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.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing his services. Given the evidence in this case, Appellant has failed to meet that burden.

As clearly stated in the request for hearing, this appeal is limited to challenging the reduction of personal care/homemaker services from 3 hours a day, 7 days a week, to 3 hours a day, 5 days a week. Therefore, to the extent Appellant's representative

Docket No. 2012-56996 EDW
Decision and Order

disputes the allocation of respite care, that issue is not before this Administrative Law Judge and would have to be the subject of a separate appeal.

With respect to the reduction that is at issue in this case, Appellant's daughter's testimony makes clear that she wants the six hours of personal care/homemaker services reinstated so that Appellant's daughter can get some rest and not because the services are medically necessary for Appellant. As testified to by Appellant's daughter, she can take care of her mother and just needs the six hours to sleep. However, the Waiver Agency can only authorize personal care/homemaker services that the client needs.

Moreover, it is undisputed that Appellant has other natural supports, *i.e.* her son and daughter-in-law. Appellant's daughter correctly notes that those other natural supports cannot be forced to care for Appellant, but she also concedes that they do help. Those additional natural supports also reinforce the lack of medical necessity for the six hours that were taken away.

Given the improper reason why Appellant's daughter seeks the reinstatement of the six hours and the presence of other natural supports, the previous amount of services were excessive and the Waiver Agency's decision to reduce Appellant's services must be sustained.

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Docket No. 2012-56996 EDW
Decision and 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 reduced Appellant's MI Choice waiver services.

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

cc:

[REDACTED]

Date Mailed: 9/6/2012

***** 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.