

**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. 2012-58056 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, [REDACTED] (Appellant) appeared and testified on his own behalf.

[REDACTED] LBSW, Contracts Manager, appeared and testified on behalf of the Department's Waiver Agency, Region 2 Area Agency on Aging (Region 2 AAA or Waiver Agency). [REDACTED]s, Supports Coordinator, Social Worker; [REDACTED] RN, Supports Coordinator; and [REDACTED] RN, Deputy Director for Region 2 AAA; appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce Appellant's self-determination hours from 30 to 21 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. The Department contracts with Region 2 AAA to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. Region 2 AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Testimony)
3. The Appellant is a [REDACTED] Appellant's primary diagnosis is Paraplegia NOS, caused by a jet ski accident in 2008. Appellant is paralyzed from the chest down. (Exhibit A, p 31)

Docket No. 2012-58056 EDW
Hearing Decision & Order

4. Appellant resides in a single family home with his mother and father. Appellant's father is an R.N. and works nights. Appellant's mother is a teacher, and works days. As such, someone is almost always home with Appellant. Appellant's brother also lives close by and can assist Appellant when needed. (Exhibit A, p 28; Testimony)
5. In [REDACTED] Waiver Agency staff completed an in-person reassessment with Appellant. (Exhibit A, pp 25-37) . A new Care Plan Worksheet was completed, which demonstrated that Appellant's needs could be met with 21 hours of self-determination care per week. (Exhibit A, pp 15-18; Testimony)
6. On [REDACTED] the Waiver Agency notified Appellant that it had determined that his self-determination hours would be reduced from 30 to 21 hours per week. (Exhibit A, p 10; Testimony).
7. On [REDACTED] Michigan Administrative Hearing System received a request for hearing from the Appellant. (Exhibit 1). In his request for hearing, Appellant stated:

I disagree with the reduction of hours in the home care and extended care that has been required in taking care of me. (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 (Department). Regional agencies, in this case the Region 2 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:

6.3 SELF-DETERMINATION

Self-Determination provides MI Choice participants the option to direct and control their own waiver services. Not all MI Choice participants choose to participate in self-determination. For those that do, the participant (or chosen representative(s)) has decision-making authority over staff who provide waiver services . . .

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 bears the burden of proving, by a preponderance of evidence, that 30 hours per week of CLS hours are medically necessary.

The Waiver Agency witnesses testified that they completed a new Care Plan Worksheet, which showed that only 21 self-determination hours per week were medically necessary for Appellant. The Waiver Agency witnesses testified that the reduction was based on the results of the Care Plan Worksheet and the fact that Appellant has significant family supports. Appellant's father works nights and Appellant's mother works days, so he is rarely left alone. If Appellant's parents are unavailable to provide support for Appellant, other family members live near by and are willing and able to provide assistance.

Appellant testified that this is the second time that his self-determination hours have been reduced and that he does not understand the reduction given that his condition has not changed since his accident in 2008. Appellant testified that his parents already go way beyond the call of duty in caring for him and that they deserve to be reimbursed for at least 30 hours per week.

The Waiver Agency witnesses indicated that Appellant is able to drive a car, go out on the boat (on his wheel chair) and can feed himself if someone prepares the food for him. The Appellant was informed that no one disputes his medical condition, nor does anyone dispute the fact that he needs significant support. The Waiver Agency witnesses simply pointed out that many of the tasks that are done for Appellant, such as meal preparation, are shared tasks that the family would be doing anyway. As such, reimbursement for such activities would not be medically necessary.

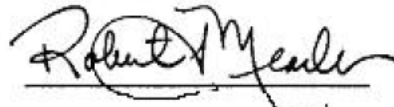
This ALJ finds that the Waiver Agency properly reduced Appellant's self-determination hours from 30 to 21 per week and that the Waiver Agency presented substantial evidence to support its conclusion. The Appellant failed to establish by a preponderance of the evidence that 30 self-determination hours per week were medically necessary. The Appellant could not dispute any of the findings in the Care Plan Worksheet, which is an objective measure of Appellant's needs. Furthermore, it is true that Appellant has significant family supports and that many of the tasks that are done for Appellant, such as meal preparation, are shared tasks that the family would be doing anyway.

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 reduced Appellant's self-determination hours from 30 to 21 hours per week.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



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

cc:

[REDACTED]

Date Mailed: 10/11/2012

***** 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.