STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM FOR THE DEPARTMENT OF COMMUNITY HEALTH

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Case Appellant	Docket No. 2012-61881 EDW No
DECISION AND ORDER	
This matter is before the undersigned and 42 CFR 431.200 et seq. upon the	d Administ rative Law Judge pursuant to MCL 400.9 e Appellant's request for a hearing.
After due notice, a hearing was held Attorney for Appellant, appeared on testified on his own behalf.	on Power of Appellant's behalf. Appellant also appeared and
Agency, the Valley Area Agenc y or	or, represented the Department's MI Choice Waiver or Aging, (Waiver Agency or Valley AAA). al Worker, appeared as a witness on behalf of the
ISSIIE	

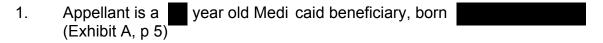
ISSUE

Did the Waiver Agency properly reduce the Appellant's self-determination Community Living Supports (CLS) hours from 50 to 40 hours per week?

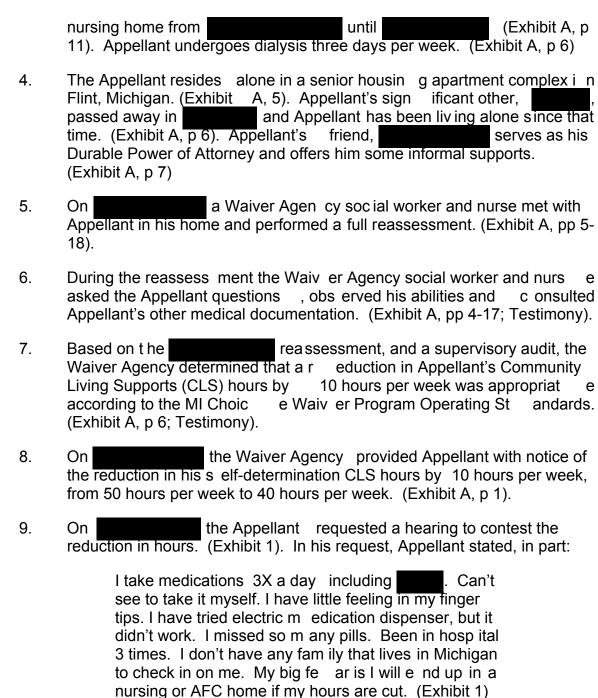
FINDINGS OF FACT

IN THE MATTER OF:

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:



- 2. Appellant is currently enrolled in the MI Choice Waiver Program. (Testimony).
- 3. Appellant is legally blind and his diagnoses in clude: End Stage Rena I Disease, Congestive Heart Failure, COPD, Anxiety, and Diabetes. (Exhibit A, pp 10-11). Appellant was hospita lized on for a Urinary Tr act Infection and Halluc inations. Appellant was t hen in a



CONCLUSIONS OF LAW

The Medic al Ass istance Program is establis hed purs uant to Tit le 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 stat e 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 c laiming services thr ough the Department's Home and Communit y Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Center s for Medicare and Medicaid (formerly HCFA) to the Mich igan Department of Community Health (Department). Regional agen cies, in this case an Area Agency on Aging (AAA), function as the Department's administrative agency.

Waivers are intended to prov ide 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 comm unity 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 re imbursable under the State Plan. 42 CF R 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 parti al hos pitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) fo r individuals with chronic mental illness, subject to the conditions specified in paragr aph (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 Waiv er Program list servic es available under the waiver pr ogram and addresses the standards expected for each serv ice. The Operating Standards include respite services.

The MI Choice Waiver defines Community Living Supports services as follows:

4.1.I. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) services facilitate a participant's independenc e and promote reasonable participation in the community. Services can be provided in the participant's residence or in a community setting to meet support and service needs.

CLS may include assisting, reminding, c ueing, obs erving, guiding, or training with m eal preparation, laundry, household care and maintena nce, shopping for food and ing s uch as other nec essities, and activiti es of daily liv bathing, eating, dressing, or personal hygiene. It may provide assistance with s uch activ ities as money management, nonmedical care (not requiring nur physician intervention), social participat ion, relationship maintenance and building community conn ections to reduce personal isolation, non-medi cal transportation from the participant's residence to community activities, participation in regular community activities incidental to meeting the participant's community living preferences, attendance at medical appointments, and acquiring or procuring goods and services necessary for home and community living.

CLS staff may provide other assistanc e necessary to preserve the health and safety of the participant so they may reside and be supported in the most integrated and independent community setting.

CLS services cannot be author ized in circumstances where there would be a duplication of services available elsewhere or under the State Plan. CLS ser vices cannot be authorized in lieu of, as a duplic ation of, or as a supplement to similar authorized waiver services. The distinction must be apparent by unique hours and units in the individual plan of ser vices.

Tasks that address personal c are needs differ in scope, nature, supervision arrangements or provider type (including provider training and qualific ations) from personal care service in the State Plan. The differences between the waiver cov erage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

When transportation incidental to the provision of CLS is included, it must not also be authorized as a separate waiver service. Transportation to medical appoint ments is covered by Medicaid through the State Plan. Community Living Supports do not include the cost associated with room and board.

Michigan Medicaid Provider Manual MI Choice Waiver Section July 1, 2012, Page 12-13

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 c overed 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 50 hours per week of Communi ty Living Supports (CLS) through the MI Choice Waiver Pr ogram. The Appellant bears the burden of proving, by a preponderance of evidence, that the 50 CLS hours per week are medically necessary.

The Waiv er Agenc y's Supports Coordinat or testified that she completed the reassessment with Appellant on Based on the assessment, the Waiver Agency's Supports Coordinator concluded that Appellant's needs could be met in the five and a half to six hours of service per day he would receiv e at 40 CLS hours per week.

Appellant's representative te stified that since Appellant 's hours have been reduced, he has fallen a couple of times tryi ng to do the ings hims elf. Appellant's representative indicated that Appellant has also been getting sick after his dialys is lately and that the caring for him during these times has taken away from the time. Appellant's workers would nor mally be doing cooking, cleaning and other household chores. Appellant's representative testified that Appellant has been complaining to her since the hours have been reduced and she thinks reducing Appellant's hours creates a safety issue.

Appellant testified that he appreciates the help he has been getting through Valley AAA, but that the workers are always in a ru sh now that his hours have been reduced. Appellant indicated that they often do not have time to do laundry or prepare his meals, so he eats a lot of fast, fried food. Appellant testified that his biggest fear is that he will fall and injure himself, and no longer be able to stay in his own apartment.

The Waiver Agency's Supports Coordinator cl arified that even with the reduced hours Appellant has workers in his home every day from approx imately 8:00 a.m. to 10:00 a.m., from 3:00 p.m. to 5:00 or 6:00 p.m., and then an additional hour in the evenings, so that they can set up his medications. The Waiver Agency's Supports Coordinator indicated that with se If-determination, Appellant can adjust the hours so that he uses fewer hours on good days so that he will have more hours available when he has a bad day. The Waiver Agency's Supports Coordinator also pointed out that Appellant has home delivered meals, so the workers should not have to prepare many meals for Appellant.

This ALJ finds that the Waiver Agency pr operly authorized 40 hours per week as an appropriate number of CLS hours to meet the medically nec essary needs of Appellant. The Appellant failed to establish by a preponderance of the evidence that 50 CLS hours per week were medically nec essary. It is clear that Appellant has significant medical issues and requires s ignificant care, but a re view of the assessment, as well as the testimony during the hearing, shows that Appellant's needs can be met in 40 hours per week. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional resp ite services 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 conclus ions of law, this Administrative Law Judge finds that the Waiver Agency properly reduced the Ap pellant's CLS hours from 50 to 40 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



Date Mailed: <u>9/21/2012</u>

*** 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.