

**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. 2012-74022 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] [REDACTED], Appellant's daughter and power of attorney appeared and testified on Appellant's 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], LMSW, Care Manager, appeared as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for 60 Community Living Supports (CLS) 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 an [REDACTED] woman, born [REDACTED] (Exhibit A, p 11) Appellant's diagnoses include arthritis, glaucoma, atrial fibrillation, osteoarthritis, peripheral vascular disease, diabetes type 2, hypertension, and cerebrovascular accident. Appellant had a stroke in

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██████████ with L hemiplegia. Appellant has had kidney stones, cholecystectomy, GI bleeding, skin grafting on back of both legs, and is hard of hearing. (Exhibit A, p 24)

4. Appellant ██████████ was admitted to the hospital on ██████████ after the wound clinic found signs of infection on the 5<sup>th</sup> digit of Appellant's right foot, which required IV antibiotics. Appellant was transferred to Care Link on ██████████ until transferred to the University ██████████ of Michigan Hospital on ██████████. Appellant was discharged on ██████████ (Exhibit A, p 24).
5. In ██████████ Appellant's family requested that Appellant's care hours be increased to 60 hours per week because Appellant's daughter ██████████ was moving out of the house and Appellant's daughter ██████████ works long hours. (Exhibit A, p 30, Testimony)
6. On ██████████ Region 2 AAA notified Appellant that it had determined that she qualified for 30 CLS hours per week. (Exhibit A, p 10; Testimony).
7. On ██████████ the Michigan Administrative Hearing System received a request for hearing from the Appellant. (Exhibit 1). In the request for hearing, Appellant's daughter stated:

My job requires mandatory 12 hrs Mon - Fri. I am single and I have to work and there is no one else in the family to care for my mother, so I need someone for these hours. I would very much appreciate this help. I have no other choice. If I did I wouldn't ask for these hours. (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:

#### **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.I. COMMUNITY LIVING SUPPORTS**

Community Living Supports (CLS) services facilitate a participant's independence 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, cueing, observing, guiding, or training with meal preparation, laundry, household care and maintenance, shopping for food and other necessities, and activities of daily living such as bathing, eating, dressing, or personal hygiene. It may provide assistance with such activities as money management, nonmedical care (not requiring nurse or physician intervention), social participation, relationship maintenance and building community connections to reduce personal isolation, non-medical 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 assistance 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 authorized in circumstances where there would be a duplication of services available elsewhere or under the State Plan. CLS services cannot be authorized in lieu of, as a duplication 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 services. Tasks that address personal care needs differ in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care service in the State Plan. The differences between the waiver coverage 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 appointments is covered by Medicaid through the State Plan. Community Living Supports do not include the cost associated with room and board.

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 60 CLS hours per week are medically necessary.

The Waiver Agency representatives testified that recent Care Plan Worksheets showed that Appellant qualified for approximately 26 CLS hours per week, but that because of Appellant's significant needs, that amount was increased to 30 hours per week. (Exhibit A, pp 18-20). The Waiver Agency representatives testified that the Waiver Agency does not provide companionship services, but only services for actual needs of participants.

Appellant's daughter testified that the problem is that she is now the only person caring for her mother and that she has to work 10 hours per day Monday through Friday, 8 hours on Saturday and 5 hours on Sunday. Appellant's daughter testified that her mother cannot be left alone and cannot move at all without assistance.

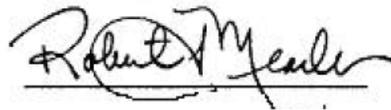
This ALJ finds that the Waiver Agency properly authorized 30 CLS hours per week for Appellant. The Appellant failed to prove, by a preponderance of the evidence, that 60 CLS hours per week were medically necessary. The Care Plan Worksheet prepared by the Waiver Agency demonstrates that Appellant's needs, although significant, can be met through approximately 26 CLS hours per week. The Waiver Agency has already increased that amount by 4 hours per week due to Appellant's medical needs. The number of care hours per week Appellant is eligible for is determined by her needs, not the number of hours that her family member has to work. As such, 60 CLS hours per week are not medically necessary and cannot be approved based on the evidence in the record.

**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 authorized 30 CLS hours per week for Appellant.

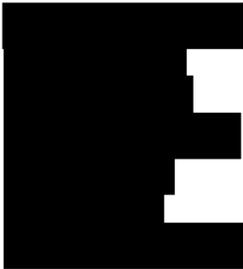
**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.



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

cc:



Date Mailed: 10/26/2012

**\*\*\* 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.