

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

P.O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2012-29906 EDW

██████████  
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 son, appeared and testified on Appellant's behalf. ██████████, Appellant's daughter-in-law, also testified on Appellant's behalf. ██████████ registered nurse, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the Detroit Area Agency on Aging ("Waiver Agency" or "AAA"). Vivian Dawson, Manager of AAA's Long-Term Care Department, was also present during the hearing.

**ISSUE**

Did the Waiver Agency properly reduce Appellant's homemaker 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 and has been diagnosed with hypertension, cardiac artery disease, paralysis agitans, cerebrovascular accident late effects with dysphagia and risk of aspiration, degenerative joint disease, incontinence, constipation, and dementia. (Exhibit 2, page 2).
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 is enrolled in and has been receiving MI Choice waiver services through AAA. Specifically, Appellant had been receiving homemaker

services for ██████ hours a day, ██████ days a week; personal care services for ██████ hours a day, ██████ days a week and ██████ hours a day, ██████ days a week, and home-delivered meals. (Exhibit 1, page 16; ████████████████████).

4. AAA staff completed a reassessment of Appellant's services and determined that Appellant's needs could be met through a decreased amount of services. (Testimony of ██████████).
5. On ██████████, AAA sent Appellant a notice that it was reducing her homemaker services by 1 hour a day. (Exhibit 1, pages 21-22).
6. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 1, page 32).
7. While the effective date of the reduction was identified in the notice as ██████████, the reduction was not implemented because of Appellant's timely appeal. (Exhibit 1, page 21; ████████████████████).

### **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.

The 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))

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))

Here, 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.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that the

Waiver Agency erred in reducing her homemaker services and that, consequently, the reduction should be sustained.

The Medicaid Provider Manual (MPM) provides:

#### **4.1.B. HOME MAKER**

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.

(MPM, MI Choice Waiver Chapter  
January 1, 2012, page 9)

As a preliminary matter, this Administrative Law Judge would note that Appellant's representative and witness appear to blend homemaker services and personal care services. Personal care services can be, and are in this case, provided by the Waiver Agency, but they encompass different tasks than homemaker services:

#### **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  
January 1, 2012, page 10)

To the extent that Appellant seeks more personal care services, that issue is not before this Administrative Law Judge as the negative action being appealed in this case was the reduction in homemaker services.

With respect to homemaker services, the Waiver Agency based the reduction in part on the fact that Appellant receives home-delivered meals and that her daughter-in-law also prepares meals. (Testimony of ██████████ Appellant's representative testified in response that, even when meals are delivered, the meals must still be "blended" and that blending the meals takes over thirty minutes each meal. (Testimony of ██████████)). However, there are no express dietary restrictions in the record and no basis for finding that the care provider must spend a significant amount of time preparing the home-delivered meals. Similarly, given the nature of the meals, there is no basis for concluding that cleaning up after the preparation of Appellant's meals would require a significant amount of time.

Additionally, it is also undisputed that Appellant lives in a small bedroom. (Testimony of ██████████; Testimony of ██████████). Given the small size of Appellant's room, tasks such as routine household cleaning and maintenance would not take very long and do not justify additional hours of care.

Given the services covered by Appellant's personal care services, in addition to the size of Appellant's room and the presence of home-delivered meals, Appellant has failed to meet her burden of proof of demonstrating that the one-hour a day reduction in homemaker services was in error. Accordingly, the Waiver Agency's decision to reduce Appellant's services must be sustained as it is reflective of Appellant's medically necessary need for assistance.

**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 homemaker services through the MI Choice waiver program.

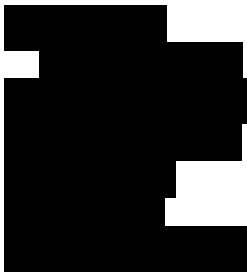
**IT IS THEREFORE ORDERED** that:

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

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

cc:



Date Mailed: 5-4-12

**\*\*\* 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.