

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARINGS 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. 2012-47298 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 Wednesday, [REDACTED]. Appellant, appeared on her own behalf. [REDACTED] appeared as a witness for the Appellant.

[REDACTED] Quality and Training Manager, represented the Department's MI Choice waiver agency, The Senior Alliance 1-C, (Agency or Senior Alliance). [REDACTED] Supports Coordinator, appeared as a witness on behalf of Agency.

**ISSUE**

Did the MI Choice Waiver agency properly deny Appellant's request for a one time, three hour increase in self determination hours?

**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 [REDACTED] Medicaid beneficiary, born [REDACTED].
2. Appellant has been enrolled in the MI Choice Waiver program since [REDACTED].
3. Appellant's diagnosis include: multiple sclerosis, depressive disorder, sleep apnea, and arthritis. [REDACTED]
4. The Appellant resides alone in a private residence. The Appellant has some informal supports, but they are inconsistent. [REDACTED]

- [REDACTED]
- [REDACTED] Appellant had outpatient surgery for an exacerbation relating to her multiple sclerosis. Appellant's [REDACTED] accompanied her to the surgery and spent the next two nights in Appellant's home to make sure she was alright. [REDACTED]
- [REDACTED]
6. On [REDACTED] Appellant requested an additional 3 hours of self-determination services, in addition to the 30 hours per week she is authorized for, to account for some of her [REDACTED] time caring for her following the surgery. [REDACTED]
  7. On [REDACTED] the Agency provided Appellant with an Adequate Action Notice notifying her that her request for a one-time, additional 3 hours of self-determination services was denied. The notice included Appellant's rights to a Medicaid Fair Hearing [REDACTED]
  8. On [REDACTED], the Appellant requested a hearing to contest the denial. [REDACTED]

### **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 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)*

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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).

Quality and Training Manager at the Senior Alliance testified that Appellant was receiving 30 hours per week of self-determination services under her Plan of Care. testified that the Senior Alliance Participant Rights and Responsibilities form, provided to all participants, explains that it is the participant’s responsibility to provide information necessary for the Agency to provide services to meet participant’s needs, and that this includes notifying the Agency ahead of time if additional hours are going to be needed. Here, testified that the Appellant did not notify the Agency ahead of time that she was having outpatient surgery, so her request for additional hours was denied.

The Appellant testified that she had to go to the hospital emergency room because of an exacerbation related to her multiple sclerosis and that they informed her that she

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would need outpatient surgery. Appellant indicated that there was no way she could have known ahead of time that she was going to have the surgery.

Appellant's [REDACTED], testified that he was the person who accompanied Appellant to the outpatient surgery and cared for her at home following the surgery. [REDACTED] testified that Appellant informed him on [REDACTED] that the surgery was going to be the next day, on [REDACTED]

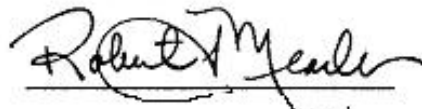
This ALJ finds that the Agency did correctly deny Appellant's request for a one-time, three hour increase in her self-determination services. According to Appellant's nephew, Appellant informed him one day prior to the surgery that it was going to take place and that she would need his assistance. As such, Appellant had sufficient time to notify the Agency ahead of time that she was having surgery and she could have made a request for additional hours at that time. Because she did not do so, Appellant has failed to prove, by a preponderance of the evidence, that she is entitled to the additional hours requested.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly denied Appellant's request for a one-time, three hour increase in her self-determination services.

**IT IS THEREFORE ORDERED** that:

The MI Choice Waiver Agency's decision is **AFFIRMED**.



Robert J. Meade  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6-21-2012

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**\*\*\* 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.