

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-53282 EDW
No. [REDACTED]

[REDACTED] Case

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, appeared on his own behalf. While Appellant listed a [REDACTED] as his Authorized Hearing Representative on his Request for Hearing, the undersigned was unable to reach [REDACTED] at the number provided on the Request for Hearing or at an alternate number provided by Appellant. Appellant agreed to proceed with the hearing in [REDACTED] absence.

Rochel Genge, R.N., CCM Nursing Supervisor, represented the [REDACTED] [REDACTED] the Region VII Area Agency on Aging, (Waiver Agency or Region VII AAA). Stacy Lopez, Social Worker, appeared as a witness on behalf of the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's personal care and homemaker hours by 10 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. Appellant is a [REDACTED] Medicaid beneficiary, born [REDACTED] (Exhibit 1, p 11)
2. Appellant is currently enrolled in the MI Choice Waiver Program. (Testimony).
3. Appellant's diagnosis include: [REDACTED]

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)*.

██████████
Docket No. 2012-53282-EDW
Hearing Decision & Order

The MI Choice Waiver Program lists services available under the waiver program and address the standards expected for each service. The Operating Standards include personal care services and homemaker services.

The MI Choice Waiver defines Homemaker services as follows:

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, e.g., 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.

The MI Choice Waiver defines Personal Care services as follows:

“...assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . .”

*Michigan Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2012, Pages 9-11*

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 ██████████ services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

The Appellant was receiving 6 hours per day (42 hours per week) personal care and homemaker services through the MI Choice Waiver Program. These hours were allocated from 8-10 am, 12-2 pm and 4-6 pm each day. The Appellant bears the burden of proving, by a preponderance of evidence, that the 42 hours per week are medically necessary.

At the reassessment on ██████████ it was reported by Appellant and his friend ██████████

██████████
Docket No. 2012-53282-EDW
Hearing Decision & Order

that one of Appellant's caregivers was not there completing services, but instead was sleeping on the couch. Appellant repeatedly stated that it was okay because the caregiver was his friend. It was discussed with Appellant that this was not an appropriate use of caregiver hours and that a reduction would be appropriate. Appellant agreed. It was discussed that Appellant's personal care and homemaker hours would be reduced by 2 hours per day 5 days per week, removing the 12-2 pm service hours on Sunday, Monday, Thursday, Friday, and Saturday. Appellant would continue to have 6 hours per day of services on Tuesday and Wednesday. Appellant agreed that he could feed himself and prepare a light meal for lunch on the days when he did not have services from 12-2 pm, or he could sign up for home delivered meals for lunch on those days.

The Appellant testified that it is hard for him to prepare meals and that he needs the assistance. Appellant testified that he wanted to continue to receive 42 hours per week personal care and homemaker hours.

It should be noted that Appellant's Request for Hearing was completed by the caregiver who was found to be sleeping on the job, who is also the caregiver who would be affected by the reduction in Appellant's caregiver hours. Appellant expressed no dissatisfaction with the decrease in hours during the in-person reassessment on ██████████.

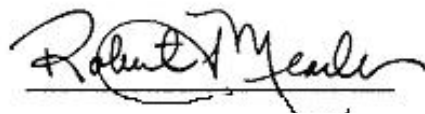
This ALJ finds that the Waiver Agency properly authorized 32 hours per week as an appropriate number of personal care and homemaker service hours to meet the medically necessary needs of Appellant. The Appellant failed to establish by a preponderance of the evidence that 42 personal care and homemaker hours per week were medically necessary. It is clear that Appellant was not using the 10 hours of personal care and homemaker hours appropriately given that the caregiver in question was often sleeping on Appellant's couch during this time. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional personal care services and homemaker 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 conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly reduced the Appellant's personal care and homemaker hours to 32 per week.

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:



Date Mailed: _____

***** 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.