

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. 2012-56330 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.* and upon the Appellant's request for a hearing.

After due notice, this hearing was first commenced on [REDACTED]. However, following some discussion and testimony, this Administrative Law Judge determined that the hearing should be continued at the later date so that the parties and the court could have an opportunity to review all of the proposed exhibits. The hearing was continued on [REDACTED].

Throughout the hearing, [REDACTED] Appellant's daughter, appeared and testified on Appellant's behalf. Appellant, [REDACTED] Appellant's Home Help aide, and [REDACTED] Appellant's healthcare worker, also testified as witnesses for Appellant. [REDACTED] Waiver Program Director, represented the Department of Community Health's Waiver Agency, the Valley Area on Aging ("Waiver Agency" or "AAA"). [REDACTED] registered nurse/supports coordinator, also testified as a witness for AAA.

ISSUE

Did the Waiver Agency properly reduce Appellant's 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 an [REDACTED] year-old woman who has been diagnosed with exudative macular degeneration, congestive heart failure, chronic obstructive pulmonary disease, arthritis, osteoporosis, and hypertension. (Exhibit 3, pages 36, 42).

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 has been enrolled in and receiving MI Choice waiver services through AAA, including 10 hours per week of personal care, 3 hours per week of homemaker services, and 20 hours per week of community living supports (CLS). (Testimony of ██████████).
4. On ██████████ AAA staff completed a reassessment of Appellant's needs and services. (Exhibit 3, pages 36-53).
5. Based that reassessment, the Waiver Agency found that Appellant's CLS services should be reduced. It also determined that her homemaker services could be terminated. Her personal care services would remain the same. (Testimony of ██████████).
6. Following the changes, Appellant would receive 10 hours per week of personal care services and 10 hours per week of CLS. (Testimony of ██████████).
7. On ██████████ AAA sent Appellant a written notice that it was reducing her services through the waiver program. (Exhibit 3, page 5).
8. On ██████████ the Department received a Request for Hearing filed on behalf of Appellant regarding the change of services in this case. (Exhibit 1; Exhibit 2).

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.

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.

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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).]

Types of services that may be offered include:

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).]

As a preliminary matter, this Administrative Law Judge would note that there were three types of services previously authorized in this case, *i.e.* homemaker services, personal care services and CLS. With respect to those services, the Medicaid Provider Manual (MPM) states:

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.

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, April 1, 2012, pages 9-10.]

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

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board. [MPM, MI Choice Waiver Chapter, April 1, 2012 ,
pages 12-13.]

As described in the above policy, the three types of services in this case are very similar and have some overlap. Consequently, the parties considered them together and identified the issue in this case as a reduction of services from 33 hours a week to 20 hours a week.

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.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing her services. Given the evidence in this case, Appellant has failed to meet that burden.

Appellant's caregivers were unable to describe the times necessary to provide specific tasks and their work logs, especially [REDACTED] log, also failed to describe the what they did and how long it took them. [REDACTED] testified that she does not list all the work she does in the logs, but the Waiver Agency is justified in relying on those reports. Moreover, in this case, those logs include repeated entries for 3 hours of dishwashing on a single day, which is clearly excessive. The logs also appear to demonstrate a duplication of the services provided by [REDACTED]

In addition to the problems with the logs themselves, the Waiver Agency's representative also correctly notes that the caregivers appear to be seeking payment for some services not covered by the waiver program. Those services include talking with Appellant (by [REDACTED]) and caring for her dogs (by [REDACTED]).

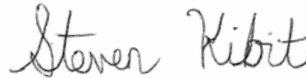
Given the above record, Appellant has failed to meet her burden of proving that the Waiver Agency erred in reducing her services. Accordingly, the Waiver Agency's decision must be affirmed.

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 Michigan choice waiver services.

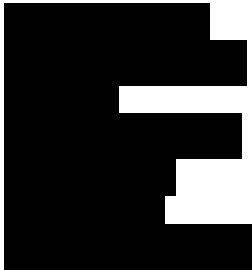
IT IS THEREFORE ORDERED that:

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



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

cc:



Date Mailed: 9/6/2012

***** 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.