

**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. 2012-58506 EDW  
Case No. [REDACTED]**

[REDACTED]

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on Wednesday, [REDACTED] Appellant [REDACTED] appeared and testified on his own behalf.

[REDACTED] LBSW, Waiver Services Manager, Region II Area Agency on Aging, appeared and testified on behalf of the Department's Waiver Agency.

**ISSUE**

Did the Waiver Agency properly reduce the Appellant's 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] year-old male ([REDACTED] Medicaid beneficiary who is enrolled in the MI Choice Waiver program. (Exhibit 4 and testimony).
2. Appellant was receiving Medicaid services including 40 hours per week of services provided on a Self-Determination basis, and Ensure a dietary supplement. (Exhibits 1-4 and testimony).
3. Appellant's girlfriend [REDACTED] is his formal caregiver. (Exhibits 1, 3, 4 and testimony).
4. On [REDACTED] the Waiver Agency sent the Appellant a Notice stating his self-

determination hours would be reduced from 40 to 35 hours per week effective ██████████ because the Appellant's needs did not warrant the existing hours. (Exhibit 3).

5. On ██████████ MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 3).

## **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 MIChoice 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 II Area Agency on Aging, 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 *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, provides in part:

### **SECTION 1 – GENERAL INFORMATION**

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. [p. 1].

\* \* \*

### **6.3 SELF-DETERMINATION**

Self-Determination provides MI Choice participants the option to direct and control their own waiver services. Not all MI Choice participants choose to participate in self-determination. For those that do, the participant (or chosen representative(s)) has decision-making authority over staff who provide waiver services, including:

- Recruiting staff
- Referring staff to an agency for hiring (co-employer)
- Selecting staff from worker registry
- Hiring staff (common law employer)
- Verifying staff qualifications
- Obtaining criminal history and background investigation of staff
- Specifying additional service or staff qualifications based on the participant's needs and preferences so long as such qualifications are consistent with the qualifications specified in the approved waiver application and the Minimum Operating Standards
- Specifying how services are to be provided and determining staff duties consistent with the service specifications in the approved waiver application and the Minimum Operating Standards
- Determining staff wages and benefits, subject to State limits (if any)
- Scheduling staff and the provision of services
- Orienting and instructing staff in duties
- Supervising staff
- Evaluating staff performance
- Verifying time worked by staff and approving timesheets
- Discharging staff (common law employer)
- Discharging staff from providing services (co-employer)
- Reallocating funds among services included in the participant's budget
- Identifying service providers and referring for provider enrollment
- Substituting service providers
- Authorizing payment for Goods and Services
- Reviewing and approving provider invoices for services rendered

Participant budget development for participants in self-direction occurs during the person-centered planning process and is intended to involve individuals the participant chooses. Planning for the participant's plan of service precedes the development of the participant's budget so that needs and preferences can be accounted for without arbitrarily restricting options and preferences due to cost considerations. A participant's budget is not authorized until both the participant and the waiver agency have agreed to the amount and its use. In the event that the participant is not satisfied with the authorized budget, he/she may reconvene the person-centered planning process. The waiver services of Fiscal Intermediary and Goods and Services are available specifically to self-determination participants to enhance their abilities to more fully exercise control over their services.

The participant may, at any time, modify or terminate the arrangements that support self-determination. The most effective method for making changes is the person-centered planning process in which individuals chosen by the participant work with the participant and the supports coordinator to identify challenges and address problems that may be interfering with the success of a self-determination arrangement. The decision of a participant to terminate

participation in self-determination does not alter the services and supports identified in the participant's plan of service. When the participant terminates self-determination, the waiver agency has an obligation to assume responsibility for assuring the provision of those services through its network of contracted provider agencies.

A waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. Prior to terminating a self-determination agreement (unless it is not feasible), the waiver agency informs the participant in writing of the issues that have led to the decision to terminate the arrangement. The waiver agency will continue efforts to resolve the issues that led to the termination. [pp. 20-21].

The issue appealed in this case is whether the Waiver Agency properly reduced the Appellant's self-determination hours from 40 hours per week down to 35 hours per week. Appellant appealed the reduction of his self-determination hours.

The Waiver Agency's witness ██████████ LBSW, testified a reassessment of the Appellant's case revealed that some of the hours the Appellant's girlfriend/self-determination worker was being paid for to care for the Appellant's were being used to prepare her own meals. ██████████ stated the Appellant's self-determination hours should be reduced by 5 hours per week down to 35 hours per week to account for the caregiver's own food preparation. ██████████ stated there was still sufficient time in the remaining 35 hours to allow the caregiver to prepare the Appellant's meals, since they do not eat the same meals.

██████████ testified Medicaid was also paying for the Appellant's nutritional supplement Ensure. ██████████ concluded that Appellant's current care manager ██████████ and a nurse were the ones who went out and did the reassessment. They determined that there should be a five hour reduction in the Appellant's self-determination hours and they properly notified him in writing of the reduction by sending out the Advance Action notice.

The documentary evidence submitted by ██████████ shows that the Appellant's current care manager ██████████ LLMSW, and ██████████ RN, completed the reassessment in the Appellant's home on ██████████. On ██████████ ██████████ reviewed the Appellant's case with his supervisor and it was determined that the meals should not be counted as part of the hours the caregiver worked as she lived with the Appellant and had to also make her own meals. Appellant was advised of this decision on ██████████ (See Exhibit #4)

The Appellant stated his caregiver was his girlfriend ██████████. Appellant acknowledged that his girlfriend was receiving the 40 hours pay to care for him. Appellant stated his care managers did not bring up the question of the meal preparation during the reassessment meeting. Appellant testified his care manager called him about a week later to tell him of the reduction in hours. Appellant stated his care manager said the budget was tight and there had to be a reduction in his self-determination hours.

Appellant testified his girlfriend makes her own meals, and has to make different meals for him as they do not eat the same food. Appellant stated he did not count extra hours for the time his girlfriend spent making her own meals. He said his care is a full-time job. Appellant stated his hours were increased in [REDACTED] and then four months later they turned around and reduced his hours, this does not make sense.

The Waiver Agency provided sufficient evidence that its reduction of the Appellant's self-determination hours was proper. The Appellant's care managers along with their supervisor determined that a five hour per week reduction in self-determination hours was justified under the Appellant's circumstances. [REDACTED] pointed out that there was still adequate time authorized for the Appellant's caregiver to prepare the Appellant's meals for him. Furthermore, it is certainly possible for the caregiver to prepare food for the Appellant at the same time she is preparing her own meals. There is no question that Medicaid dollars cannot be used to pay for the time the caregiver is preparing her own meals.

The Appellant has failed to demonstrate by a preponderance of the evidence that the 35 hours per week of self-determination services currently authorized is insufficient to allow for meal preparation by his caregiver. Since the evidence shows there are sufficient hours authorized to allow the caregiver to prepare the Appellant's meals, the waiver agency acted properly in reducing the Appellant's self-determination hours from 40 down to 35 hours per week.

[REDACTED]  
Docket No. 2012-58506 EDW  
Hearing Decision & Order

**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 the Appellants self determination hours from 40 hours per week down to 35 hours per week.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

*William D Bond*

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William D. Bond  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 8/31/2012

**\*\*\* 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

