

**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. 2012-61881 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] Power of Attorney for Appellant, appeared on Appellant's behalf. Appellant also appeared and testified on his own behalf.

[REDACTED] Community Services Director, represented the Department's MI Choice Waiver Agency, the Valley Area Agency on Aging, (Waiver Agency or Valley AAA). [REDACTED], Supports Coordinator, Social Worker, appeared as a witness on behalf of the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's self-determination Community Living Supports (CLS) hours from 50 to 40 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] year old Medicaid beneficiary, born [REDACTED] (Exhibit A, p 5)
2. Appellant is currently enrolled in the MI Choice Waiver Program. (Testimony).
3. Appellant is legally blind and his diagnoses include: End Stage Renal Disease, Congestive Heart Failure, COPD, Anxiety, and Diabetes. (Exhibit A, pp 10-11). Appellant was hospitalized on [REDACTED] for a Urinary Tract Infection and Hallucinations. Appellant was taken in a

nursing home from ██████████ until ██████████ (Exhibit A, p 11). Appellant undergoes dialysis three days per week. (Exhibit A, p 6)

4. The Appellant resides alone in a senior housing apartment complex in Flint, Michigan. (Exhibit A, 5). Appellant's significant other, ██████████, passed away in ██████████ and Appellant has been living alone since that time. (Exhibit A, p 6). Appellant's friend, ██████████ serves as his Durable Power of Attorney and offers him some informal supports. (Exhibit A, p 7)
5. On ██████████ a Waiver Agency social worker and nurse met with Appellant in his home and performed a full reassessment. (Exhibit A, pp 5-18).
6. During the reassessment the Waiver Agency social worker and nurse asked the Appellant questions, observed his abilities and consulted Appellant's other medical documentation. (Exhibit A, pp 4-17; Testimony).
7. Based on the ██████████ reassessment, and a supervisory audit, the Waiver Agency determined that a reduction in Appellant's Community Living Supports (CLS) hours by 10 hours per week was appropriate according to the MI Choice Waiver Program Operating Standards. (Exhibit A, p 6; Testimony).
8. On ██████████ the Waiver Agency provided Appellant with notice of the reduction in his self-determination CLS hours by 10 hours per week, from 50 hours per week to 40 hours per week. (Exhibit A, p 1).
9. On ██████████ the Appellant requested a hearing to contest the reduction in hours. (Exhibit 1). In his request, Appellant stated, in part:

I take medications 3X a day including ██████████. Can't see to take it myself. I have little feeling in my finger tips. I have tried electric medication dispenser, but it didn't work. I missed so many pills. Been in hospital 3 times. I don't have any family that lives in Michigan to check in on me. My big fear is I will end up in a nursing or AFC home if my hours are cut. (Exhibit 1)

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.

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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, in this case an Area Agency on Aging (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).

The MI Choice Waiver Program list services available under the waiver program and addresses the standards expected for each service. The Operating Standards include respite services.

The MI Choice Waiver defines Community Living Supports services as follows:

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 board.

*Michigan Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2012, Page 12-13*

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

The Appellant was receiving 50 hours per week of Community Living Supports (CLS) through the MI Choice Waiver Program. The Appellant bears the burden of proving, by a preponderance of evidence, that the 50 CLS hours per week are medically necessary.

The Waiver Agency's Supports Coordinator testified that she completed the reassessment with Appellant on ██████████. Based on the assessment, the Waiver Agency's Supports Coordinator concluded that Appellant's needs could be met in the five and a half to six hours of service per day he would receive at 40 CLS hours per week.

Appellant's representative testified that since Appellant's hours have been reduced, he has fallen a couple of times trying to do things himself. Appellant's representative indicated that Appellant has also been getting sick after his dialysis lately and that caring for him during these times has taken away from the time Appellant's workers would normally be doing cooking, cleaning and other household chores. Appellant's representative testified that Appellant has been complaining to her since the hours have been reduced and she thinks reducing Appellant's hours creates a safety issue.

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Appellant testified that he appreciates the help he has been getting through Valley AAA, but that the workers are always in a rush now that his hours have been reduced. Appellant indicated that they often do not have time to do laundry or prepare his meals, so he eats a lot of fast, fried food. Appellant testified that his biggest fear is that he will fall and injure himself, and no longer be able to stay in his own apartment.

The Waiver Agency's Supports Coordinator clarified that even with the reduced hours Appellant has workers in his home every day from approximately 8:00 a.m. to 10:00 a.m., from 3:00 p.m. to 5:00 or 6:00 p.m., and then an additional hour in the evenings, so that they can set up his medications. The Waiver Agency's Supports Coordinator indicated that with self-determination, Appellant can adjust the hours so that he uses fewer hours on good days so that he will have more hours available when he has a bad day. The Waiver Agency's Supports Coordinator also pointed out that Appellant has home delivered meals, so that the workers should not have to prepare many meals for Appellant.

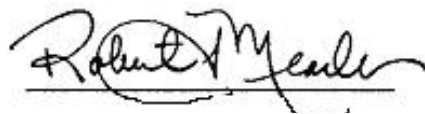
This ALJ finds that the Waiver Agency properly authorized 40 hours per week as an appropriate number of CLS hours to meet the medically necessary needs of Appellant. The Appellant failed to establish by a preponderance of the evidence that 50 CLS hours per week were medically necessary. It is clear that Appellant has significant medical issues and requires significant care, but a review of the assessment, as well as the testimony during the hearing, shows that Appellant's needs can be met in 40 hours per week. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus additional respite 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 that the Waiver Agency properly reduced the Appellant's CLS hours from 50 to 40 hours per week.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for James Haveman Jr., Director
Michigan Department of Community Health

cc:



Date Mailed: 9/21/2012

***** 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.