

**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) 373-4147

IN THE MATTER OF:

**Docket No. 2013-23133 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 [REDACTED]. [REDACTED], Appellant's granddaughter, appeared and testified on Appellant's behalf. [REDACTED], Appellant's son, also testified on Appellant's behalf.

[REDACTED], Clinical Manager, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the [REDACTED]. (AAA or Waiver Agency)

ISSUE

Did the MI Choice Waiver Agency properly deny the Appellant's request for four additional hours of personal care services?

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]. Appellant's primary diagnosis is paraplegia following back surgery nine years ago. Appellant is also diabetic and morbidly obese. Appellant has recently suffered two mini strokes and is also legally blind. Appellant also receives care for decubitus ulcers. (Exhibit A, p 14; Testimony)
2. The Department contracts with the [REDACTED] to provide MI Choice Waiver services to eligible beneficiaries.
3. [REDACTED] must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.

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4. Appellant lives alone in an apartment. Appellant's husband passed away in ██████████. Appellant receives informal support from her children and grandchildren. (Exhibit A, p 16; Testimony)
5. During a routine home reassessment on ██████████, Appellant's family requested an additional four hours of personal care services per day because Appellant's husband had passed away and they did not want Appellant to be alone. Appellant's care manager noted during the reassessment that Appellant's medical needs had not changed and that her family requested additional personal care hours so that Appellant would not be left alone. (Exhibit A, p 4)
6. Appellant currently receives ten hours of personal care per day from ██████████ to ██████████ (Exhibit A, p 18)
7. Appellant's care manager spoke to her supervisor regarding Appellant's request and the decision was made to deny Appellant's request for four additional personal care hours because Appellant's medical needs had not changed and her condition had not worsened. (Exhibit A, p 5; Testimony)
8. On ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing her that her request for four additional personal care hours was denied. The Notice contained Appellant's rights to a fair hearing. (Exhibit A, p 5; Testimony)
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for a hearing. (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.

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, 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 Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2013, provides in part:

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections.

* * *

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 participant) or cueing to prompt the participant to perform a task. Personal Care services are 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.

Medicaid Provider Manual
MI Choice Wavier Section
January 1, 2013; pp 9-10

The Appellant requested that she receive an additional four hours per day of personal care services and her request was denied. The Appellant bears the burden of proving,

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by a preponderance of evidence that she is entitled to the additional four hours per day of personal care services she is requesting.

The Waiver Agency's Clinical Manager testified that when Appellant's care manager conducted a reassessment on [REDACTED], Appellant's medical needs had not changed since the prior assessment and her condition had not worsened to an extent that would justify additional personal care hours. The Waiver Agency's Clinical Manager testified that Appellant's family had even indicated that they were requesting additional personal care hours because Appellant's husband had died and they did not want Appellant to be alone. The Waiver Agency's Clinical Manager testified that when Appellant's request for additional personal care hours was denied, the Waiver Agency offered Appellant other alternatives, such as moving into an assisted living facility or breaking up the hours that Appellant's care workers were in the home. Appellant's family declined these alternatives.

Appellant's granddaughter read into the record a letter from Appellant's doctor, who is in support of Appellant receiving additional personal care hours. (Exhibit 2). Appellant's granddaughter testified that an additional four hours of personal care hours per day would greatly assist family members in caring for Appellant given that all of the family members work full-time jobs. Appellant's granddaughter indicated that currently her family members take turns staying with Appellant at night. Appellant's granddaughter indicated that in her culture, putting Appellant into a nursing home is not an option. Appellant's granddaughter also indicated that she would be very concerned about the care Appellant would receive in a nursing home because she does not speak any English. Appellant's granddaughter indicated that the personal care workers that come to Appellant's home do speak [REDACTED], which makes caring for Appellant much easier. Appellant's granddaughter testified that she believes any change in Appellant's circumstances would make her condition worsen. Appellant's granddaughter also testified that in the past when Appellant's spouse went into the hospital, the Waiver Agency provided two additional personal care hours per day, so they recognized that Appellant would need additional care in her husband's absence.

This ALJ finds the MI Choice Waiver Agency properly denied the Appellant's request for an additional four hours per day of personal care services. The evidence presented demonstrates that Appellant's needs have not changed since her last assessment, so there can be no medical justification for additional personal care hours. While additional care hours would make it easier for Appellant's family to care for Appellant, that alone is not a justification for an increase in services. In addition, the Waiver Agency must base its decision on the information it had in-hand when the decision was made. Here, the Waiver Agency did not have the letter from Appellant's doctor in-hand when it made its decision, so that letter cannot be used to overturn the Waiver Agency's decision. Should Appellant's condition worsen, she can always request another assessment. The Waiver Agency also properly offered Appellant's family some alternatives if they feel the current hours are insufficient, but Appellant's family has rejected those alternatives. It is admirable that Appellant's family wishes to keep Appellant in her own home, but this

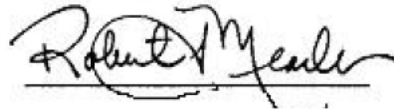
does not mean that Appellant's condition justifies additional hours of personal care services.

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 the Appellant's request for an additional four hours per day of personal care services.

IT IS THEREFORE ORDERED that:

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



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

cc:



Date Mailed: 3/8/2013

***** 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.