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) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 2013-30848 EDW
[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 [redacted] Appellant's sister [redacted] appeared and testified on the Appellant's behalf. Appellant's mother [redacted] was also present but did not testify.

[redacted], Quality and Training Manager, [redacted] appeared and testified on behalf of the Department's Waiver Agency.

ISSUE

Did the [redacted] Agency properly deny an increase in the Appellant's [redacted] 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. The Appellant is a Medicaid beneficiary who is enrolled in the [redacted] program. (Exhibit A and testimony).

2. The Appellant is a [redacted]-year-old woman ([redacted] (Exhibit A, pp. 3, 9 and testimony).

3. On [redacted], an initial assessment was conducted with the Appellant and her family by [redacted] and [redacted] R.N., in the Appellant's home. The Waiver Agency determined there was a limited need for some homemaking and personal care specifically for the Appellant and they authorized [redacted] hours of Comprehensive Community Support services per week on a Self Determination basis. (Exhibit A, pp. 2, 3-18, 19 and testimony).

4. On [redacted], the Appellant's Supports Coordinator denied a request for an increase in services as there was no documentation of a change in the Appellant's medical status or the health or availability of informal supports since the assessment to justify the requested increase. (Exhibit A, p. 2 and testimony).

5. On [redacted], MAHS received the Appellant's request for an Administrative 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 [redacted] The program is funded through the federal Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies 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*, April 1, 2013, 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).

* * *

4.1 COVERED WAIVER SERVICES
In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections. (p. 9).

* * *

4.1.B. HOMEMAKER

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. (p. 9, emphasis added).

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. (p. 10, emphasis added).

* * *

4.1.I. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) services facilitate an individual'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, non-medical 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 individual'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 individual so they may reside and be supported in the most integrated 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 may not 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's plan of service. 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. (pp. 12-13).

The issue appealed is whether the [redacted] Agency properly denied the Appellant's request for additional [redacted] services. Appellant's representative appealed the denial and stated the [redacted] hours per week do not seem adequate to provide the daily services needed by the Appellant

The [redacted] Agency's witness testified an initial assessment for [redacted] services was conducted with the Appellant and her family on [redacted] by [redacted], and [redacted], R.N. (See Exhibit A, pp.2, 3-18). It was determined by the social worker and the nurse that the Appellant qualified for the [redacted] program, that she specifically needed some limited assistance with homemaking and personal care, and there were already some informal supports in place in the home.

The [redacted] Agency's witness stated the things the Appellant required specific to her were assistance with bathing, which was primarily cueing, dressing her upper body, and homemaking that included cleaning her room and doing her laundry. The Agency's witness stated the Appellant, her mother, and sister have a shared living arrangement in a private apartment. For formal services for the Appellant the [redacted] Agency put in place [redacted] hours a week, consisting of [redacted] minutes per day for assistance with dressing her upper body, [redacted] minute per day for her grooming, [redacted] minutes three times per week for set-up, supervision and cueing for her showers, and [redacted] and [redacted] hours for laundry and cleaning the Appellant's room. The hours for these needed services were authorized on a self-determination basis, and Appellant's sister who lives with the Appellant is the designated worker providing these services. The services authorized include homemaking, person care and community living supports.

The Supports Coordinator found that the Appellant's mother and sister provided many informal supports. Appellant's sister cleans the common areas of the home. Also, the Appellant's mother and sister prepare meals for the family, run errands, and informally manage the Appellant's medication. The [redacted] Agency's witness stated Attachment K, Section D of their contract with the Department, (See Exhibit A, p. 21), states that the Agency does not replace informal supports that are in place with waiver services, particularly those informal supports that serve the needs of the whole family, and not just the participant. The Agency's witness stated they are to serve the particular needs of the Appellant above and beyond things done for the household in general.

The [redacted] Agency's witness stated that after the services were in place, there was a request for additional services for the Appellant. The Supports Coordinator denied the

request for additional services because she did not receive any documentation of any change in circumstances or any new needs above and beyond what was found during the initial assessment.

Appellant's sister testified she provides the waiver services for the Appellant. She stated she believes [redacted] hours per week is not sufficient to provide the basic services the Appellant is entitled to receive. Appellant's sister stated it takes more than [redacted] minutes per day to get the Appellant ready for the day. She also stated that the [redacted] hours for laundry and cleaning the Appellant's room are not enough, because they also have to clean other rooms in the apartment used by the Appellant.

The Appellant bears the burden of proving by a preponderance of the evidence that additional [redacted] services are necessary. The Appellant was given an opportunity to prove why additional services are necessary. The testimony of the Appellant's witness did not establish the need for additional services specific to the Appellant above what the [redacted] Agency determined were necessary in accordance with Medicaid policy. The [redacted] Agency cannot provide waiver services that benefit the household in general, but only services which meet the specific needs of the Appellant. The preponderance of the evidence in this case shows that the services authorized are sufficient to meet the Appellant's individual needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [redacted] Agency acted properly when it denied Appellant's request for additional [redacted] services.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

[redacted]
Hearing Decision & Order

WDB/db

cc: [redacted]

***** 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.