

**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:

██████████,

Appellant

Docket No. 2013-33527 EDW
Case No. ██████████

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, a hearing was held on ██████████. ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. ██████████, E/D Waiver Supervisor, represented the Department of Community Health's Waiver Agency, the ██████████, Inc. ("Waiver Agency" or "MORC"). ██████████, a registered nurse/supports coordinator, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency proper 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 a ██████ year-old female who has been diagnosed with congestive heart failure, not otherwise specified; coronary heart disease; chronic obstructive pulmonary disease; hypertension; arthritis; dementia; macular degeneration, not otherwise specified; and coronary artery disease. (Respondent's Exhibit C, pages 1, 7-8).
2. MORC 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 MORC, including personal care services. Per the choice of Appellant and her family, the services were provided in a four hour block

- of time in the morning. (Testimony of Appellant's representative; Testimony of ██████████).
4. As part of her personal care services, Appellant was receiving one (1) hour of transferring assistance per day and thirty (30) minutes of toileting assistance per day. (Testimony of ██████████; Testimony of ██████████).
 5. On ██████████, ██████████ conducted a home visit and reassessment with Appellant and Appellant's daughter. (Respondent's Exhibit C, pages 1-17).
 6. During that visit, Appellant's daughter reported that Appellant is never left alone and, when the care giver through the waiver program is not present, family members are there. Family members also provide the necessary personal care services at night, including transferring. If the family members cannot be there, then they pay someone to stay with Appellant. (Testimony of Appellant's daughter; Testimony of ██████████).
 7. Appellant's daughter further reported that the care giver through the waiver program was doing Appellant's laundry. (Testimony of Appellant's daughter; Testimony of ██████████).
 8. According to ██████████, Appellant and her daughter also role-played a typical transfer at ██████████ request. (Testimony of ██████████).
 9. Based that demonstration and the reports of Appellant and her daughter, ██████████ decided to adjust Appellant's personal care services. Specifically, ██████████ determined that Appellant should receive 8 units of laundry assistance while the assistance with transferring should be reduced from 28 units a day (1 hour) to 7 units a day (15 minutes). (Respondent's Exhibit C, page 14; Testimony of ██████████).
 10. On ██████████, MORC sent Appellant written notice it was reducing her personal care services/transferring assistance. The reduction was effective March 11, 2013. (Respondent's Exhibit A, page 1).
 11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant. (Petitioner's Exhibit 1, pages 1-6).

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. 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. See 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).]

In this case, Appellant has been receiving personal care services. With respect to personal care services, the applicable version of the Medicaid Provider Manual (MPM) states:

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. [MPM, January 1, 2013 version, MI Choice Waiver Chapter, page 10.]

Here, it is undisputed that the Appellant has a need for some personal care services and she has continuously been receiving such 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.

With respect to Appellant's needs in this case, the Waiver Agency found that she was authorized for more assistance with transferring than she needed. MORC made that determination based on the reports of Appellant and her daughter, as well as a demonstration of how she is transferred. As testified to by ██████████, Appellant and her daughter reported that the formal care giver assists Appellant in transferring out of bed into the morning and onto a chair. ██████████ also had Appellant and her daughter role-play a typical transfer. ██████████ further testified that Appellant and her daughter reported that family members provide the necessary personal care services at night, including transferring. To better reflect what was occurring and Appellant's actual needs, the Waiver Agency reduced Appellant's assistance with transferring from 1 hour a day to 15 minutes a day. As testified to by ██████████, 15 minutes is sufficient for 2-3 transfers a day.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing her services. Here, Appellant's daughter/representative primarily argues that the formal care giver assists Appellant more than just a couple times in the morning. According to Appellant's daughter, the care giver also assists Appellant on-and-off the commode for toileting and in-and-out of the shower for bathing. However, assistance with that type of transferring is covered by other personal care tasks, such as toileting and bathing, and Appellant is already receiving assistance with those tasks.

With respect to transferring at night, while Appellant's daughter agrees that the family does provide the necessary assistance at night, she also testified that it is difficult on the family and they requested additional waiver services for the night. However, it is not clear that such additional services were requested as ██████████ credibly testified that no such request was made. Moreover, even assuming that a request was made, the Waiver Agency does not provide care around-the-clock and Appellant's family has chosen to utilize the personal care services in a four-hour block during the day, with the family providing the necessary care at night.

Given the above evidence, Appellant has failed to meet her burden of proof. Accordingly, the Waiver Agency's decision to reduce her services is affirmed.

[REDACTED]
Docket No. 2013-33527 EDW
Decision and 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 Appellant's services.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to reduce Appellant's waiver services is **AFFIRMED**.

Steven Kibit

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

[REDACTED]
Date Signed: 6/5/2013

Date Mailed: 6/5/2013

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.