

**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. 2013-16325 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, appeared on her own behalf. [REDACTED], Appellant's spouse, and [REDACTED], Appellant's daughter, appeared as witnesses for the Appellant.

[REDACTED], Quality and Training Manager, represented the Department's MI Choice Waiver Agency, [REDACTED] (Waiver Agency or [REDACTED]). [REDACTED], Supports Coordinator, appeared as a witness for the Waiver Agency.

ISSUE

Did the MI Choice Waiver agency properly reduce Appellant's personal care and homemaker 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 Medicaid beneficiary, born [REDACTED]. (Exhibit A, p 13)
2. Appellant has been enrolled in the MI Choice Waiver program for several years. (Testimony).
3. Appellant's diagnosis include: stroke/CVA, hemiplegia, seizure disorder, transient ischemic attack, traumatic brain injury, anxiety, renal failure, myasthenia gravis, chronic headaches, crohn's disease, and intracerebral hemorrhage. Appellant is paralyzed on her left side and is bed bound. Appellant only leaves the home to go to doctors appointments. (Exhibit A, pp 20-22; Testimony).

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4. The Appellant lives with her husband, who is wheelchair bound, and her adult daughter, who is one of her paid care givers and also the source of informal supports. (Exhibit A, p 15; Testimony).
5. On [REDACTED], the Waiver Agency conducted a reassessment of Appellant's needs. It was discovered during the reassessment that Appellant's aides were also assisting her husband and that there had been a slight inadvertent increase in Appellant's care hours in [REDACTED]. (Exhibit A, p 2; Testimony).
6. The Waiver Agency spoke to Appellant's vendor, who confirmed that its aides were also assisting Appellant's spouse. The Waiver Agency also reviewed Appellant's care logs, which confirmed that Appellant's aides were assisting her spouse and that the aides were spending a lot of down time watching television and visiting with Appellant. (Exhibit A, pp 2; 42-86; Testimony).
7. On [REDACTED], the Agency mailed Appellant an Advance Action Notice notifying her that her care hours were being reduced from 86 hours per week to 38 hours per week, effective [REDACTED]. The care hours were subsequently increased to 40 hours per week on [REDACTED]. The notice included Appellant's rights to a Medicaid Fair Hearing (Exhibit A, p 12; Testimony).
8. The Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED] (Exhibit 1).
9. Since the commencement of this action, Appellant's spouse has also become a participant in the MI Choice Waiver Program and receives 35 care hours per week. (Testimony)

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 function as the Department's administrative agency.

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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)*.

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The MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards include personal care services and homemaker services.

The MI Choice Waiver defines Homemaker services as follows:

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.

The MI Choice Waiver defines Personal Care services as follows:

"...assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . ."

Michigan Medicaid Provider Manual
MI Choice Waiver Section
October 1, 2012, Pages 9-11

The Waiver Agency's Quality and Training Manager testified that she and Appellant's supports coordinator reviewed Appellant's care logs after they discovered during the reassessment that Appellant's aides were also assisting Appellant's spouse. A review of the logs demonstrated multiple instances when Appellant's aides were in fact assisting Appellant's husband, and even Appellant's daughter, who is one of Appellant's paid care givers. The Waiver Agency's Quality and Training Manager also discovered instances when Appellant's aides were accompanying Appellant to doctor's appointments, which is not a paid service under the MI Choice Waiver Program. The Waiver Agency's Quality and Training Manager testified that following the review, the Waiver Agency determined that Appellant's needs could be met with 40 care hours per week. The Waiver Agency's Quality and Training Manager also indicated that subsequent to the reduction, Appellant's spouse has become a participant in the MI Choice Waiver Program and he receives 35 hours per week of care. As such, the

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overall number of care hours in the household has decreased from 86 hours per week to 75 hours per week.

The Appellant, her spouse, and her daughter all testified that there was never an inadvertent increase in Appellant's care hours, but rather the daughter simply changed to a different payroll company. Appellant testified that she is paralyzed on one side and needs an aide to accompany her to doctor's appointments because her arm will fall out of the chair in the vehicle and she needs someone to move it back. Appellant also indicated that she needs the assistance of an aide when attending her doctor appointments. The Appellant and her family disputed that they ever received the written notice from the Waiver Agency regarding the reduction in hours. Appellant's spouse testified that the aides did assist him, but only when they were already conducting the same task for Appellant. Appellant's spouse also testified that the aides needed to clean the whole house because both he and his wife created messes throughout the house because of their disabilities.

This ALJ finds that the Waiver Agency properly reduced Appellant's care hours and properly reduced Appellant's care hours pending this appeal because Appellant did not appeal within 12 days of the Advance Action Notice. The Advance Action Notice was mailed to the proper address and Appellant indicated that she has not had any problem receiving her mail. Appellant's request for hearing was received some two months following the effective date of the action and, as such, was well beyond the 12 day limit to continue services during the pendency of the appeal.

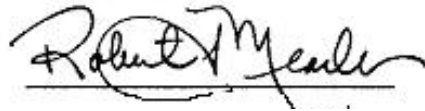
Furthermore, it is clear from the provider logs that Appellant's aides had significant down time, were assisting Appellant's spouse, and were completing tasks, such as accompanying Appellant to doctors appointments, that are not covered by the MI Choice Waiver Program. There was also evidence that the aides were cleaning Appellant's daughter's room, which would likewise not be a covered service. Furthermore, as indicated above, now that Appellant's husband is a participant in the MI Choice Waiver Program, the overall reduction in hours in the household is less significant. The Appellant failed to prove, by a preponderance of the evidence, that a reduction in her care hours was improper.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds that the MI Choice Waiver Agency properly reduced Appellant's care hours.

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: 4/16/2013

***** 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.