

**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. 2013-25366 EDW

Case No. 40880551

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 Tuesday, March 5, 2011. Appellant ██████████ appeared and testified on her own behalf.

Deborah Bach-Stante, Quality and Training Manager, The Senior Alliance 1-C, appeared and testified on behalf of the Department's Waiver Agency. Tonya Williams, LLBSW, Coordinator, also testified for the Department's Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's Community Living Supports services to 6 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. The Appellant is a Medicaid beneficiary who is enrolled in the MI Choice Waiver program. (Exhibit A and testimony).
2. The Appellant is a 73 year-old woman (DOB ██████████). (Exhibit A and testimony).
3. On December 27, 2012, a reassessment was conducted for the Appellant by Tonya Williams, LLBSW, in the Appellant's home. Ms. Bach-Stante was also present at the time of the reassessment. It was determined that the Appellant had improved in her ADL status and overall self-sufficiency since her June

assessment. It was subsequently determined Appellant's Community Living Supports (CLS) hours would be reduced from 42 hours per week to 6 hours per week. (Exhibit A and testimony).

4. On January 15, 2013, the Waiver Agency sent the Appellant a Notice stating her CLS would be reduced to 6 hours per week effective January 26, 2013. The CLS hours were maintained pending the Appellant's appeal. (Exhibit A and testimony).
5. On January 26, 2013, 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 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.

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*, October 1, 2012, 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).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

* * *

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.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 Waiver Agency properly reduced the CLS hours. Appellant appealed the reduction in hours and stated they reduced service hours from six hours per day to six hours per week, and that she is unable to complete her daily tasks by herself.

The Waiver Agency's witness testified that an in-person reassessment for MI Choice Waiver services was conducted with the Appellant on December 27, 2012 by Tonya Williams, LLBSW. (See Exhibit A, Attachment A). It was determined that the Appellant had improved in her ADL status and overall self-sufficiency since her June assessment. Ms. Bach-Stante stated the Appellant had a significant improvement in her physical functioning from her June to her December assessment. In June she needed extensive assistance with transfers and supervisory transfers to the toilet and limited assistance with the use of the toilet, and she needed assistance with locomotion/walking. Ms. Bach-Stante stated she no longer needed assistance with these things at the December assessment.

Appellant informed Ms. Williams that she was able to prepare meals and did not have a need for meal preparation which had been on her previous care plan. Appellant told the waiver agents that she told her aides when they began their job that it would be an easy job because there was nothing for them to do. The aide sat at the table and visited the entire hour during the assessment. The aide did make snacks and got beverages for guests that came in during the assessment. The aides also indicated they gave breathing treatments to the Appellant, which was not a covered service and not part of the Appellant's plan of care.

Ms. Bach-Stante stated that following their visit they reviewed the Appellant's plan of service. They also requested aide logs to determine how the aide was utilizing her time. The logs showed the aide was spending a lot of time visiting, watching TV, and doing things other than what was in the Appellant's plan of care.

The Waiver Agent then sent Appellant an Advance action Notice reducing her Community Living Supports (CLS) from 42 hours per week down to six hours per week. Ms. Bach-Stante stated based on the December assessment the only services the Appellant currently needs are homemaking and a little bit of personal care to assist her with showers. Ms. Bach-Stante stated they reduced the services to two hours per day three days per week, which would be sufficient to meet the Appellant's current needs, since she lives in a one

bedroom apartment. The hours were not reduced since Appellant filed a timely request for a hearing.

Appellant testified that she can't use her right arm because she has no elbow. She also indicated that she is on nightly oxygen and occasionally uses it during the day. Appellant also indicated that she has rheumatoid arthritis.

The Appellant bears the burden of proving by a preponderance of the evidence that additional hours of CLS services are necessary. The Appellant was given the opportunity to prove why additional CLS hours were necessary. The testimony of the Appellant did not establish the need for additional CLS hours above what the Waiver Agency determined were necessary in accordance with the Medicaid policy. The Waiver Agency demonstrated that it reassesses the Appellant's needs every 90 days to ensure that the services authorized are sufficient to meet her needs. The preponderance of the evidence in this case shows that the CLS hours to be authorized are sufficient to meet the Appellant's needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency acted properly when it reduced Appellant's CLS hours to six hours per week.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

/S/

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

cc:

[REDACTED]

Date Mailed: 03/14/2013

***** 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.