

**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.** 2013-45081 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. ██████████, Quality and Training Manager, represented the Department of Community Health's Waiver Agency, The ██████████ ("Waiver Agency" or ██████████). ██████████, 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 a stroke/cerebrovascular accident, hypertension, arthritis, transient ischemic attack (TIA), depression, renal failure, diabetes mellitus, obsessive compulsive disorder, heart disease NOS, vertigo, and neuropathy. (Respondent's Exhibit G, pages 1, 8-10).
2. ██████████ 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 ██████████ since ██████████. (Respondent's Exhibit G, page 19).
4. Specifically, Appellant had been authorized for a combination of personal

- care services and homemaking services, in the amount of 19.25 hours per week. (Testimony of Appellant's representative; Testimony of ██████████e).
5. While authorized for personal care and homemaker services, Appellant's services are billed as Community Living Supports (CLS) because she utilizes the Waiver Agency's self-determination program. In that program, Appellant's services are not specifically broken down and, among other choices, she allocates how her services are utilized. (Testimony of ██████████).
  6. Appellant's representative is the paid self-determination worker. (Respondent's Exhibit G, page 19).
  7. Appellant lives at and her waiver services are provided at the ██████████. (Respondent's Exhibit G, page 19).
  8. On ██████████ and ██████████, ██████████ staff conducted reassessments of Appellant's services. (Respondent's Exhibit G).
  9. Following those reassessments, it was determined that Appellant's services should be reduced because daily housekeeping is included in the rent Appellant pays to the ██████████ and because Appellant's care provider cannot be paid for medication management, as she is not a licensed professional, or transportation to medical appointments, as that is not a covered waiver service. (Testimony of ██████████).
  10. On ██████████, ██████████ sent Appellant a written Advance Action Notice that her services would be reduced on ██████████. (Respondent's Exhibit A, page 1). The notice specifically stated, in part, that:

Self Determination service will be reduced from 19.25 hours per week to 8 hours per week as reflected in job description. [Respondent's Exhibit 2, page 1.]
  11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant. (Petitioner's Exhibit 1, page 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.

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 ██████████, 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, as discussed above, Appellant has been receiving both personal care services and homemaker services through the self-determination program. With respect to such services, the Medicaid Provider Manual (MPM) states:

#### **4.1.B. HOME MAKER**

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.

#### **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, April 1, 2013 version, MI Choice Waiver Chapter, pages 8-9.]

Here, it is undisputed that the Appellant has a need for some serviced and it is only the amount of services to be authorized that is at issue.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing her services.

Here, the Waiver Agency first notes that the housekeeping assistance that Appellant has been authorized for is unnecessary given that ██████████, where she lives, already provides light housekeeping. 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. In response, Appellant's representative testified that the homemaking services provided by ██████████ are minimal at best and that she has to do most of the homemaking. Such assistance, according to Appellant's representative can take up to two (2) hours a day. However, it is undisputed that housekeeping is provided and Appellant has a very small apartment. This Administrative Law Judge also does not find Appellant's testimony to be credible with respect to the amount of housekeeping assistance she claims to provide.

The Waiver Agency also properly notes that it cannot pay for the medication assistance Appellant's representative was provided as she is not a licensed medical professional. Medication assistance through the waiver program is "established through the provisions of the Private Duty Nursing service" and requires that the assistance be provided by a licensed professional. See MPM, April 1, 2013 version, MI Choice Waiver Chapter, page 17.

Similarly, the Waiver Agency cannot pay for the medical transportation that Appellant's representative has been providing:

#### **4.1.M. NON-MEDICAL TRANSPORTATION**

Non-Medical Transportation Services are offered to enable waiver participants to access waiver and other community services, activities, and resources as specified in the individual plan of services. Whenever possible, family, neighbors, friends, or community agencies who can provide

transportation services without charge must be utilized before MI Choice provides transportation services. Non-Medical Transportation Services offered through MI Choice are in addition to medical transportation required under 42 CFR 431.53 and transportation services under the State Plan, defined at 42 CFR 440.170(a), and does not replace State Plan Services. MI Choice transportation services cannot be substituted for the transportation services that MDCH is obligated to provide under the listed citations. Such transportation, when provided for medical purposes, is not reimbursable through MI Choice. When the costs of transportation are included in the provider rate for another waiver service (e.g., Adult Day Health), there must be mechanisms to prevent the duplicative billing of Non Medical Transportation Services. [MPM, April 1, 2013 version, MI Choice Waiver Chapter, page 14 (emphasis added).]

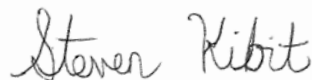
For the reasons discussed above, Appellant has failed to meet her burden of proof. Given the previous, non-covered use of Appellant's self determination hours, in addition to the services already provided by the building Appellant lives in, it is clear that a reduction was proper. Moreover, Appellant has failed to demonstrate that she requires any additional hours.

**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 services is **AFFIRMED.**



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

██████████  
Date Signed: 7/23/2013

Date Mailed: 7/23/2013

[REDACTED]  
Docket No. 2013-45081 EDW  
Decision and Order

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.