

**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) 334-9505

IN THE MATTER OF:

Docket No. 2013-65361 EDW

██████████,

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ Appellant's son/authorized representative, appeared and testified on Appellant's behalf. ██████████, Office Manager, represented the Department of Community Health's Waiver Agency, ██████████. ("Waiver Agency"). ██████████, Social Worker Support Coordinator, testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine Appellant's eligibility for MI Choice Waiver Program services at review?

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 man and has been diagnosed with: a stroke in ██████ and ██████ with multiple mini-strokes resulting in right-sided weakness of right leg and ankle, edema, right foot drop and right arm paralysis with the contracture of the wrist/hand, short term memory loss, expressive aphasia, and speech dyslexia; coronary artery disease; depression; diabetes; neuropathy; and sleep apnea. (Exhibit A, Progress Notes Report, p 9).

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 Health Options, 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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.

██████████
Docket No. 2013-65361 EDW
Decision and Order

- 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 C.F.R. § 440.180(b))

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 C.F.R. § 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

In this case, it is undisputed that the Appellant has a need for MI Choice Waiver services. Appellant has been receiving Personal Care and Homemaker services. Appellant's representative is protesting the reduction of services that the Waiver Agency determined is appropriate based on the reassessment that was completed on ██████████.

The evidence on the record establishes that Waiver Agency's ██████████ reassessment was based on a face-to-face interview with Appellant in his home, and the responses to questions posed during the reassessment. The reassessment was completed with Appellant, the girlfriend of Appellant's son, Appellant's granddaughter/caregiver, a social worker, and registered nurse (RN) present. The Waiver Agency established that during the reassessment, Appellant reported that he does not need toileting or ambulation assistance, and his granddaughter/provider and the girlfriend of Appellant's son confirmed. The witness for the Waiver Agency testified credibly that Appellant's provider was only assisting Appellant with █ medication and █ meal in the morning at the time of the review, and no services were being provided to Appellant in the afternoon. Therefore, the service hours for assistance with medications and meal preparation were reduced.

Appellant's son/authorized representative did not dispute the Waiver Agency's evidence of the reassessment. Appellant's son filed a Request for Hearing, stating that Appellant still needs █ hours of service for assistance with breakfast, shower, medications, "check sugar" and any other needs Appellant

might have; and [REDACTED] hour in the afternoon for lunch, medications, “check sugar”, etc. He stated further that when Appellant started receiving services initially, the Waiver Agency could not find anyone able to work with the schedule of services needed for Appellant; and he had to adjust the schedule to accommodate the agency to be able to supply the help needed for Appellant. Appellant’s son stated that it became necessary for him to find a provider for Appellant. Additionally, Appellant’s son stated that the level of services that were previously authorized for Appellant prior to the reduction in service hours has been able to maintain Appellant’s health and well-being; and a reduction in services will put Appellant’s health at an even greater risk.

This Administrative Law Judge must uphold the Waiver Agency’s decision. Appellant failed to meet his burden of establishing that the Waiver Agency’s reassessment was not completed in accordance with the applicable law and policy. Appellant is only entitled to services which are medically necessary. The evidence on the record establishes that the [REDACTED] reassessment of Appellant’s eligibility for MI Choice Waiver services were compiled and completed by a Department agent who is trained to identify areas in which a beneficiary such as Appellant needs assistance; and the authorization of personal care and homemaking service hours for Appellant was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined Appellant’s eligibility for MI Choice Waiver Services at review.

IT IS THEREFORE ORDERED that:

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

/s/ _____
Marya A. Nelson-Davis
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
Docket No. 2013-65361 EDW
Decision and Order

MAND/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.