

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. 2013-66632 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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, RN, Clinical Manager, appeared and testified on behalf of the Department of Community Health's (Department) Waiver Agency, ██████████ (██████████ or Waiver Agency).

ISSUE

Did the Waiver Agency properly deny Appellant's request to increase his personal care service hours from 28 to 42 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 Department contracts with ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a ██████ year-old male, born ██████████. Appellant's diagnoses include arthritis. Appellant was injured at work several years ago and has gained a significant amount of weight since that time, making him extremely immobile. Appellant testified he is 500 pounds.
4. The Appellant lives in a small, one-bedroom apartment. Appellant's caregiver sometimes stays at the apartment with him. (Exhibit A, Testimony)

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5. On ██████████, Appellant's Supports Coordinator, Angie Shephard, made a home visit with Appellant and completed a WISP-Participant Assessment Report and a Care Plan Worksheet (Exhibits 2 & 3). ██████████ personally appeared and testified at the administrative hearing.
6. The ██████████ The ██████████ Care Plan Worksheet pursuant to the in-home assessment shows a total need for 21.71 hours per week. (Exhibit 3)
7. On ██████████, ██████████ notified Appellant that it had determined that his request for an increase in hours was denied on the grounds that the Care Plan Worksheet does not reflect the need for an increase in hours at this time.
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. In his request for hearing, Appellant stated in part that he cannot retrieve meals from his fridge due to lack of mobility issues, that he is unable to control his bowel movements, and needs assistance with physical therapy. Appellant also stated that his caregiver had to move to ██████████ to seek further employment but if the hours were increased he would return 24/7 and seek part time employment. (Appellant's Hearing Request, Exhibit 3)
9. The ██████████ WISP-Participant Assessment Report states that Appellant reported: "Reports complete control of urine and bowel. Uses bed side urinal. Has 'occasional' bowel accident..." (Exhibit 2.10)
10. At the administrative hearing, Appellant requested an opportunity to go off the record to "go to the bathroom." Appellant was ready to resume in 32 seconds.
11. ██████████ testified that the ██████████ had offered Appellant an opportunity to have a caregiver assist Appellant at different times of the day, splitting his current 4 hours into 2 hour blocks to assist Appellant with his concerns in cleanliness. Appellant declined.
12. Claire Warner testified that the ██████████ had offered home delivered meals. Appellant declined.

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.

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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, in this case the [REDACTED], 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 MI Choice Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, provides in part:

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.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.

*MI Choice Wavier Section
January 1,2013; pp 9-10*

The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. 42 CFR 440.230. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

██████████ witnesses testified that Appellant's concerns for keeping clean due to bathroom issues was addressed by the ██████████ finding a caregiver who would come into Appellant's home from 12 a.m. to 2 a.m. Appellant declined. The ██████████ witnesses further testified that home delivered meals were offered to address Appellant's concern that he could not get his meals out of the fridge and warm them up. Appellant evidently also declined.

The undersigned administrative law judge (ALJ) has reviewed the credible and substantial evidence on the whole record and finds that the ██████████'s evidence is supported by credible and substantial evidence on the whole record. As noted in the Findings of Facts, the ██████████ Care Plan Worksheet assessment shows a need for 21.71 hours per week. Appellant is currently approved for 28. The waiver agency is not reducing Appellant's hours to 21.71. The action herein is to deny Appellant's request to increase his hours above 28 (or from 4 to 6 hours per day). As to ██████████'s denial of Appellant's request to have his hours increased above 28 hours, from 4 to 6 hours a day, this ALJ finds that the denial is supported by a preponderance of evidence and thus, the denial must be upheld.

As to Appellant's testimony that his caregiver needs more hours and would not look for additional employment if the hours are increased, Appellant cited no law or policy that would entitle him to prevail on the basis of his caregiver's financial issues.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly denied Appellant's request to have his CLS hours raised from 28 to 42 hours per week.

IT IS THEREFORE ORDERED that:

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

/s/ _____
Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]
[REDACTED]

Date Mailed: 12/2/2013

***** 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.