STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 14-007777 EDW

[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*., and upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted], Appellant's daughter, appeared and testified on Appellant's behalf. [redacted], Appellant's wife, also testified as a witness for Appellant. [redacted], Manager of [redacted], appeared and testified on behalf of the Michigan Department of Community Health's Waiver Agency, the [redacted] ("Waiver Agency" or "[redacted], social worker/supports coordinator, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. [redacted] is a contract agent of the Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.

2. Appellant is a [redacted] year-old Medicaid beneficiary who has been diagnosed with hypertension; a stroke/cerebrovascular accident; hemiplegia; a seizure disorder; and diabetes mellitus. (Respondent's Exhibit E, pages 1, 8-9).

3. Appellant has been receiving services through the Waiver Agency, including [redacted] hours per week of CLS. (Respondent's Exhibit E, page 15).

4. Appellant's daughter and brother are his [redacted] formal CLS workers. (Respondent's Exhibit E, page 15).

5. On [redacted] staff performed an assessment in Appellant's home with Appellant and his wife. (Respondent's Exhibit E, pages 1-16).

6. During that assessment, it was noted that Appellant's medical conditions and needs had not changed, and that he continued to be bedbound and dependent on others in all areas, including the area of bed mobility, where Appellant has to be turned and repositioned every [redacted] hours. (Respondent's Exhibit E, pages 12-14).

7. Appellant's [redacted] and the [redacted] staff members also discussed the significant amount of informal supports provided by Appellant's [redacted]. (Respondent's Exhibit C, pages 3-4; Respondent's Exhibit E, page 5; Testimony of [redacted] Testimony of [redacted]).

8. On that day, [redacted]r also completed a Plan of Care Worksheet form used by [redacted] to calculate the recommended number of in-home services that should be authorized. (Respondent's Exhibit A, pages 1-3).

9. Based on the reports of Appellant's wife regarding the informal supports she provides, [redacted]r did not score or calculate hours for the following tasks included in that worksheet: meal preparation and cleanup; housework; laundry; managing medications; and shopping. (Respondent's Exhibit B, pages 1-2; Testimony of [redacted]

10. [redacted] did find that Appellant scored the maximum number of hours provided on the worksheet for the tasks of transferring; locomotion; dressing; eating; toileting; personal hygiene; and bathing. (Respondent's Exhibit B, pages 2-3).

11. Overall, [redacted] calculated that the Care of Plan Worksheet recommended [redacted] hours per week. (Respondent's Exhibit B, page 3).

12. She also determined that an additional hour per week should be added because of Appellant's wife's reports that Appellant's food needs to be cut up into small pieces and fed to him. (Respondent's Exhibit C, page 3).

13. On [redacted], the Waiver Agency sent Appellant written notice that, in [redacted] days, his CLS would be reduced by [redacted] hours per week and he would only be authorized [redacted] hours a week of such services. (Respondent's Exhibit A, pages 1-2).

14. On [redacted] the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-3).

15. In that request, Appellant's representative asserts that Appellant requires around-the-clock care and his services should not be reduced. (Petitioner's Exhibit 1, pages 1-3).

16. The Waiver Agency did not receive notice of the appeal prior to the effective date of the action and the reduction was therefore implemented on [redacted]. (Testimony of [redacted]).

17. In [redacted] the Waiver Agency received a letter from the Michigan Department of Community Health mandating that it immediately cease use of its Care Plan Worksheet for purposes of planning service and supports, as that worksheet did not comply with the applicable law and policy. (Testimony of [redacted].

18. The Department also mandated that [redacted] develop a corrective action plan to reevaluate all persons whose hours were decreased based upon the use of the worksheet. (Testimony of [redacted]).

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 [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. *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)*

Here, Appellant has been receiving CLS through the Waiver Agency and, with respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

> **4.1.I. COMMUNITY LIVING SUPPORTS**
>
> Community Living Supports (CLS) services facilitate a participant'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, nonmedical 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 participant'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 participant so they may reside and be supported in the most integrated and 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 cannot 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 plan of services. 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.

MPM, July 1, 2014 version
MI Choice Waiver Chapter, pages 12-13

However, while CLS are Medicaid covered services, Medicaid beneficiaries are still 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 this case, it is undisputed that the Appellant has a need for some services and he has been continually been authorized for CLS. Instead, the sole dispute is the amount of such services to be authorized, with the Waiver Agency having reduced Appellant's CLS to [redacted] hours per week and Appellant's representative requesting that the services be reinstated to [redacted] hours per week.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce his services.

Here, the undersigned Administrative Law Judge finds that the Waiver Agency's decision must be reversed. [redacted] utilized its Care Plan Worksheet in deciding to reduce Appellant's CLS hours and, as testified to by [redacted], the Waiver Agency subsequently received a letter from the Michigan Department of Community Health mandating that it cease use of that Care Plan Worksheet for purposes of planning service and supports as the worksheet did not comply with the applicable law and policy. Moreover, while that letter was sent after the decision in this case, the reasoning of the letter still applies here and it also mandated that [redacted] develop a corrective action plan to reevaluate all persons whose hours were decreased based upon the use of the worksheet.

In response, [redacted] argues that the reduction in this case was proper irrespective of the use of the Care Plan Worksheet as the reduction was primarily based on the availability of informal supports and the policy requiring that Appellant utilize such supports prior to waiver services.

However, even assuming for the sake of argument that a reduction was proper given Appellant's informal supports, the amount of the reduction was inextricably tied to the use of the Care Plan Worksheet and the Waiver Agency's action must therefore be reversed. For example, [redacted] used the Care Plan Worksheet to calculate the maximum number of hours that could be authorized for assistance with the tasks of transferring, locomotion, dressing, eating, toileting, personal hygiene, and bathing. Moreover, while it is undisputed that Appellant has to be turned and repositioned in his bed every [redacted] hours, it does not appear that time was approved for such assistance as the task of bed mobility is not included on the worksheet. Similarly, as the worksheet only has a box to indicate informal supports and does not provide any instructions on how to adjust services based upon available informal supports, the Waiver Agency simply did not calculate any hours for tasks in which Appellant was receiving some informal supports.

Therefore, while the reduction in this case was not based solely on the use of the Care Plan Worksheet, the worksheet played a significant role in determining the amount of hours to be reduced and, because of that, the decision did not address Appellant's unique situation and needs when determining the number of medically necessary hours to be authorized. Accordingly, the reduction in this case must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly reduced Appellant's CLS services.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **REVERSED** and it must initiate a reinstatement of Appellant's CLS to [redacted] hours per week.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

SK/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.