

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. 14-005999 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 ██████████. Marilyn Fisher, Appellant's mother, appeared on Appellant's behalf.

██████████, Manager of ██████████, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the ██████████. (AAA or Waiver Agency). ██████████, Social Work Supports Coordinator, appeared as a witness for AAA.

ISSUE

Did AAA properly deny the Appellant's request for additional Community Living Supports (CLS) hours?

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 AAA to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A, Testimony)
2. AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Testimony)
3. Appellant is a ██████ year-old Medicaid beneficiary, born ██████████ who is diagnosed with quadriplegia and limited use of arms and shoulders. (Exhibit A, pp. 2, 6, 8; Testimony)

4. On or around ██████████ 4, the Appellant moved into a single bedroom apartment in ██████████, Michigan. The new residence was very close to his parent's residence. Due to the move, the Appellant transferred from one Waiver Agency to AAA. (Exhibit A, pp. 10, 26; Testimony)
5. Because of the move, the AAA agreed to continue the Appellant's prior level of care pending an initial assessment with AAA. (Exhibit A, p. 26; Testimony)
6. On ██████████, an initial assessment took place. (Exhibit A, pp. 6-20)
7. At the assessment, it was indicated the Appellant's parents visit often and provide informal supports. The Appellant's mother assists in grocery shopping and laundry but is unable to assist in transferring or repositioning. (Exhibit A, pp. 2, 9; Testimony)
8. Following an assessment and review of care logs kept by current providers, the Appellant's Supports Coordinator determined that Appellant's CLS hours would be reduced from 18 hours per day to 12 hours per day due a reduced need for straight catheterization and Appellant's preference to use a hand held urinal. (Exhibit A, pp. 2, 22; Testimony)
9. On ██████████, a person's centered planning meeting took place. Employees from AAA as well as the Appellant participated in the meeting. During the meeting, the level of care was discussed. AAA explained the newly assessed level of care and hours with the Appellant. The Appellant disagreed with the new assessment and requested additional hours. (Exhibit A, pp. 22, 23; Testimony)
10. On ██████████, the Waiver Agency sent Adequate Action Notice informing the Appellant that his request for hours in excess of 12 hours a day was denied. (Exhibit A, pp. 4, 5)
11. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant.

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

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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 MI Choice Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, 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.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.

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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.

Medicaid Provider Manual
MI Choice Waiver Section
October 1, 2013, pp 12-13

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.

Appellant bears the burden of proving, by a preponderance of evidence, that 57.75 CLS hours are medically necessary.

The AAA witnesses testified that Appellant's CLS hours were reduced upon a new initial assessment when he moved into their territory. After the assessment was completed, the Appellant requested additional hours above what was assessed. During the hearing, the AAA witness testified as to the reasons why a reduction took place; and identified the reduced need for straight catheterization and use of a urinal. Additionally, AAA witnesses indicated that the assessment is based on the individual needs of the client, that the Waiver Agency also considers the availability of informal supports, and that the time allocated is sufficient to meet Appellant's medical needs.

The Appellant's mother testified on the Appellant's behalf and argued her son needed additional hours as she was unable to do the transferring or repositioning. Additionally, she argued her son needed someone there every 3-4 hours to do these tasks in addition to the catheterization; and added he gets lonely if no one is there.

The AAA witnesses indicated the Appellants issues could be resolved if he were to spread his hours out over the course of a 24 hour period which he has refused. Furthermore, the AAA witnesses indicated that AAA services are not available for companionship.

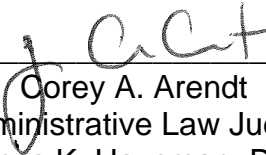
Based upon the evidence, I find that the Waiver Agency properly denied the Appellant's request for additional hours. The evidence presented demonstrated that Appellant's services were sufficient to meet the Appellant's medical needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the AAA properly denied the Appellant's request for additional hours.

IT IS THEREFORE ORDERED that:

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



Corey A. Arendt
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

CAA ██████████

cc: ██████████
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██████████
██████████
██████████

Date Signed: ██████████

Date Mailed: ██████████

***** 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.