

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. 14-007778 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████, Appellant's daughter, appeared as a witness.

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

ISSUE

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS) from 35 hours per week to 28 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. (Exhibit A, Testimony)
2. ██████████ 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 ██████████. Appellant is diagnosed with COPD, hypertension, peripheral vascular disease, osteoporosis and seizure disorder. (Exhibit A, pp 9, 15-16; Testimony)

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4. Appellant lives alone in an apartment. Appellant has family in the area who visit her regularly and talk to her on the phone daily. (Exhibit A, pp 10-11; Testimony)
5. Following an in-home reassessment on ██████████, the Waiver Agency determined that Appellant's CLS hours would be reduced from 35 hours per week to 28 hours per week based on Appellant's current needs for hands on assistance. Appellant had previously been receiving 5 CLS hours per day, allocated as 3 hours in the morning and 2 hours in the evening. The proposed reduction allocated 2 CLS hours in the morning and 2 CLS hours in the evening, 7 days per week. (Exhibit A, pp 5-27; Testimony)
6. In determining the amount of CLS hours Appellant was entitled to, the Waiver Agency utilized a Plan of Care Worksheet, which is a standard tool used for calculating service hours. According to the Plan of Care Worksheet, Appellant was entitled to 21.71 CLS hours per week. The Waiver Agency then increased Appellant's CLS hours to 28 hours per week to account for the fact that Appellant had previously had issues with falling in her apartment. (Exhibit A, pp 6-8; Testimony)
7. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice informing her that CLS hours would be reduced from 35 hours per week to 28 hours per week, effective 12 days from the date of the notice. (Exhibit A, pp 3-4; Testimony)
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from Appellant. (Exhibit 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.

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 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.

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.

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 44.5 CLS hours are medically necessary.

The Waiver Agency witness testified that Appellant's CLS hours were reduced based on a reassessment conducted on ██████████ in which the Supports Coordinator determined that Appellant's needs could be met with 28 CLS hours per week, allocated as 2 hours in the morning and 2 hours in the evening, 7 days per week. The Waiver Agency witness also indicated that she documented improvements in Appellant's conditions since the last reassessment, including an improvement in her communication skills and cognitive patterns. The Waiver Agency witness testified that based on her reassessment, 28 CLS hours per week are what is minimally, medically necessary to meet Appellant's needs.

Appellant testified that she needs the hours that she was receiving because she is slowing down as she gets older, not getting better. Appellant pointed out that she will be 94 years old in a few weeks.

Appellant's daughter testified that the Waiver Agency has been adjusting Appellant's CLS hours each reassessment since ██████████, with the CLS hours fluctuating between 24-35 hours per week. Appellant's daughter indicated that it is difficult to find a caregiver who will come for only 2 hours at a time, given the cost of gas and amount caregivers are paid. Appellant's daughter admitted that Appellant is not falling as she once was, but she is slower and has to be very careful.

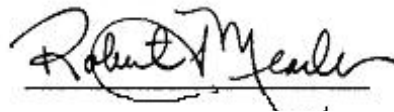
This ALJ finds that the Waiver Agency properly reduced Appellant's CLS hours from 35 hours per week to 28 hours per week. The evidence presented demonstrated that Appellant's actual hands-on care needs can be met with 28 CLS hours per week, allocated as 2 hours in the morning and 2 hours in the evening. The Plan of Care Worksheet adequately measures Appellant's needs and, in this case, the number of care hours was increased by over 6 hours per week from the result in the Plan of Care Worksheet to reflect Appellant's individual needs and situation. Furthermore, Appellant's argument that it is difficult to find a caregiver to come for only 2 hours at a time is irrelevant. The Waiver Agency must determine what hours are medically necessary to care for Appellant but, in making that determination, the Waiver Agency cannot consider what might be more convenient for a caregiver.

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 reduced Appellant's CLS hours from 35 hours per week to 28 hours per week.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Acting Director
Michigan Department of Community Health

cc:



RJM/skb

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.