

**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

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**Docket No.** 2014-008248 EDW

**Case No.** ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, an hearing was held on ██████████. ██████████, Appellant's daughter, represented Appellant. Appellant appeared and testified.

██████████, Manager for ██████████ represented the waiver Area ██████████, Michigan (Waiver Agency). ██████████, Care Manager and RN Supports Coordinator, testified on behalf of the Department's Waiver Agency.

**ISSUE**

Did the Waiver Agency act properly in reducing the Appellant's CLS services under the MI Choice Waiver program/Community Support Services from 12 hours per week down to 9 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. Appellant is a Medicaid ██████ year old male MA-extended care Medicaid category enrolled in the MI Choice Waiver program. Appellant had been receiving 13 hours per week of CLS through Self Determination. (Exhibit A; and Testimony).
2. On ██████ the Waiver Agency conducted an in-home reassessment. A new Nursing Facility Level of Care Determination (LOCD) was conducted and it was determined that the Appellant continued to meet the NFLOC and continued to be eligible for services through Door 1 of the assessment due to spinal cord injury. (Exhibit A.8)

3. At the time of the reassessment, Appellant was and continues to receive 20 hours per week of services through VA-HCBA program (Monday through Friday); receives Mom's Meals-5hot meals weekly; received transportation/mileage of 50 miles per month; has PERS through MiChoice program which Appellant wears continuously. (Exhibit A.22)
4. Prior to the reassessment, Appellant was receiving 6 total hours-2 hours, three times per week for shopping. Documentation from the reassessment indicated that Appellant shops 2 times per week. The Waiver Agency determined that service hours can be reduced by 3 hours-1 hour, 3 times per week-when taking into consideration the reduction in shopping combined with the services Appellant receives from the VA, and Mom's Meals programs. (Exhibit A and Testimony)
5. On ██████████, the Waiver Agency issued a Negative Action Notice to inform Appellant that his MI-Choice Waiver Services for community service hours "...will be reduced...." (Exhibit A.4)
6. On ██████████, MAHS received the Appellant's request for an Administrative Hearing

### **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)].

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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 *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, provides in part:

### **SECTION 1 – GENERAL INFORMATION**

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. [p. 1].

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#### **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.B. HOMEMAKER**

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance) provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator. [p. 9, emphasis added].

##### **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. [p. 10, emphasis added].

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#### **4.1.H. CHORE SERVICES**

Chore Services are needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Other covered services might include yard maintenance (mowing, raking and clearing hazardous debris such as fallen branches and trees) and snow plowing to provide safe access and egress outside the home. These types of services are allowed only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other relative, caregiver, landlord, community or volunteer agency, or third party payer is capable of, or responsible for, their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service.

#### **4.1.I. COMMUNITY LIVING SUPPORTS**

Community Living Supports (CLS) services facilitate an individual'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, non-medical 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 individual'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 individual so they may reside and be supported in the most integrated 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 may not 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's plan of service. 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. [pp. 12-13].

Federal regulations are found at 42 CFR 440.230 wherein it states:

The agency may place appropriate limits on a service based on such criteria as medical necessity or an utilization control procedures.

The issue appealed is whether the Waiver Agency properly reduced the Appellant's CLS from 12 hours per week down to 9 hours per week. Appellant appealed the reduction arguing that he has had the same number of hours for years, and that the reduction does not give him sufficient time to shop 1 hour per day, 3 days per week.

As noted in the Findings of Fact, documentation indicates that Appellant was previously approved shopping 3 days per week, 2 hours each trip for a total of 6 hours per week for shopping. However, credible and substantial documentation by the Department indicates that Appellant does not shop 3 days per week, but rather shops 2 days. The Department also indicated that Appellant can use his 3 hours per week for shopping by splitting it into 2 trips at 1.5 hours each. Appellant can elect to utilize the hours at his discretion. This gives individuals flexibility.

It is noted that the Waiver Agency has the authority to determine the amount of services indicated. Specifically, under 42 CFR 440.230 the federal government has given the agency authority to place appropriate limits on services.

In addition, the Waiver emphasized that the Waiver Agency, under federal and state law, as well as applicable policy, is to be the payor of last resort. Appellant is receiving substantial services through the VA as well as the Mom's meals program.

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The Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency did not act properly in reducing his MI Choice Waiver services. The testimony of the Appellant and his representative did not establish that the Waiver Agency acted improperly when it reduced Appellant's CLS services. The Waiver Agency acted in accordance with the Medicaid policy quoted above. The preponderance of the evidence in this case shows that the services authorized are sufficient to meet the Appellant's individual needs.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency acted properly when it reduced the Appellant's CLS services under the MI Choice Waiver program from 12 hours per week to 9 hours per week.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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Janice Spodarek  
Administrative Law Judge  
for Nick Lyons, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

JS/ [REDACTED]

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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.