

**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:

Docket No. 14-011035 EDW

██████████
Appellant
_____ /

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, a telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's primary care physician also testified on the Appellant's behalf.

██████████, Manager of ██████████, appeared on behalf of the Department's Waiver Agency. ██████████, R.N., Supports Coordinator, ██████████, testified on behalf of the Department's Waiver Agency.

ISSUE

Did the Waiver Agency act properly in denying the Appellant's request for a temporary increase in Private Duty Nursing (PDN) services under the MI Choice Waiver program?

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 Appellant is a Medicaid beneficiary who is enrolled in the MI Choice Waiver program. Appellant has been receiving ██████ hours per day, ██████ days week of PDN, from his provider ██████████. (Exhibit A, pp. X, XX and testimony).
2. The Appellant is a ██████-year-old man (DOB ██████████). (Exhibit A, p. 10 and testimony).

3. On ██████████, R.N., Appellant's Supports Coordinator received a voicemail from Appellant's PDN provider ██████████ requesting additional shifts over the upcoming weekend, as the Appellant's mother's spouse was in the hospital. ██████████ returned the call and left a message that no additional services would be authorized because the Appellant had the ability to split his ██████ hour shifts to provide the needed coverage, and had volunteer resources and informal supports that could provide the needed assistance. (Exhibit A, p. 9 and testimony).
4. On ██████████, the Waiver Agency sent the Appellant an Adequate Action Notice was sent to the stating the request on the Appellant's behalf for a temporary increase in services was denied. The notice was marked: "The assessment/reassessment does not support the need for the services. (Exhibit A, pp. 3-4, 9 and testimony).
5. On ██████████, MAHS received the Appellant's request for an Administrative Hearing. (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 *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].

* * *

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.P. PRIVATE DUTY NURSING

Private Duty Nursing (PDN) services consist of individual and continuous nursing care (in contrast to "Skilled Nursing" services characterized by part-time or intermittent care) provided by licensed nurses within the scope of State law. These services are provided to a participant at home. MI Choice participants 18-21 years old who meet the eligibility requirements for Medicaid State Plan PDN services will continue to receive PDN services through the Medicaid State Plan and will not receive PDN services through MI Choice. Older MI Choice participants may continue to receive PDN services as a MI Choice service.

Participants receiving PDN services must remain on active status when determining reassessment schedules. Refer to the Reassessment of Participants subsection of this chapter for additional information. PDN services cannot be used in place of, or as a substitute for, other waiver or State Plan services. [p. 15].

The issue appealed is whether the Waiver Agency properly denied the Appellant's request for a temporary increase in PDN. Appellant appealed the denial and in his request for a hearing he set forth his general needs for PDN Waiver services.

The Waiver Agency's witness ██████████, R.N., Supports Coordinator, established through credible testimony that on ██████████ she received a voice mail request from the Appellant's provider Interim for additional shifts during the weekend of ██████████ and ██████████. The request indicated the Appellant's step father was in the hospital. ██████████ provided credible testimony that she returned the call and denied the request for the additional shifts for the upcoming weekend, because the Appellant had the ability to split

his █████ hour shifts to provide the needed coverage, and had volunteer resources and informal supports that could provide the needed assistance not met by the PDN services.

██████████ pointed out that Appellant had chosen to have his PDN in one █████ hour shift every day, but that his needs for PDN could be fully met by incremental coverage utilizing █████ hour increments. Appellant's additional needs could be met in the intervals not covered by the PND services with Appellant's available volunteer resources and informal supports.

The denial in this case that the Appellant appealed from was only a denial of a request for a temporary increase in services for the weekend of █████ and █████. During the hearing, the Appellant and his primary care physician testified concerning the Appellant's needs in general for PDN services, but they did not establish that the Appellant had any problems due to the denial of additional coverage for the weekend of █████. Rather, the Appellant and his doctor testified that the Appellant's mother's health has worsened since the denial of the additional weekend coverage. Appellant's doctor opined that the Appellant should not be without care for more than █████ hours at a time, and that he believed the Appellant should receive an █████ hour shift of PDN instead of the █████ hour shift he is now getting.

The Waiver Agency responded that the Appellant's informal supports have changed since the denial of the temporary increase on █████. The Waiver Agency urged that a new assessment is in order to reassess the Appellant's need for services and to determine what if any additional support should be provided in the way of PDN services. There is no dispute that the Appellant does need PDN services, but whether other types of services might be authorized to supplement the current PDN services needs to be addressed by way of a reassessment of the Appellant's needs, which the Waiver Agency acknowledged is needed.

The Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency did not act properly in denying his request for a temporary increase in PDN. The testimony of the Appellant and his doctor did not establish that the Waiver Agency acted improperly when it denied the request for a temporary increase in PDN. The preponderance of the evidence in this case shows that the services authorized at the time were sufficient to meet the Appellant's individual needs for PDN.

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 in denying the Appellant's request for a temporary increase in PDN services under the MI Choice Waiver program.

[REDACTED]
Docket No. 14-011035 EDW
Hearing Decision & Order

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.

