

**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.** 14-012016 EDW

██████████,

██████████

██████████

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 Appellant's request for a hearing.

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

**ISSUE**

Did the Waiver Agency properly reduce Appellant's services?

**FINDINGS OF FACT**

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

1. ██████████ 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 an ██████████ year-old Medicaid beneficiary who has been diagnosed with arthritis, osteoporosis, depression, and Parkinson's disease. (Respondent's Exhibit E, pages 1, 8-9).
3. Appellant has been receiving services through the Waiver Agency, including ██████████ hours per week of Community Living Supports (CLS). (Respondent's Exhibit E, page 15).
4. Appellant's son lives with her and is her sole paid care provider through ██████████. (Respondent's Exhibit E, pages 3, 15).

5. Appellant also receives ██████████ per month for Aid and Attendance from the Department of ██████████. (Respondent's Exhibit E, page 2).
6. On ██████████ performed a routine reassessment in Appellant's home with Appellant and her son. (Respondent's Exhibit E, pages 1-16).
7. During that reassessment, it was noted that Appellant's medical conditions and needs were unchanged. (Respondent's Exhibit E, page 14).
8. It was also noted that, while Appellant no longer has a private duty caregiver assisting her with bathing, Appellant's daughter now informally assists Appellant with that task. (Respondent's Exhibit E, pages 3, 5).
9. ██████████ and Appellant's son further discussed a wound Appellant has and her need for frequent turning and positioning. (Respondent's Exhibit E, page 11).
10. On the day of the reassessment, ██████████ also completed a Plan of Care Worksheet form used by ██████████ to calculate the recommended number of services that should be authorized in the home. (Respondent's Exhibit C, pages 1-3).
11. In completing that form, ██████████ authorized no time for assistance with meal preparation and cleanup; housework; laundry; shopping and errands; or bathing. (Respondent's Exhibit C, pages 2-3).
12. According to ██████████, she removed those tasks because bathing was being completed by Appellant's daughter informally while all the other tasks were performed informally by Appellant's son as part of his communal living environment with Appellant. (Testimony of ██████████).
13. After completion, that Plan of Care Worksheet recommended ██████████ hours per week of services. (Respondent's Exhibit C, page 3).
14. Following the reassessment, ██████████ wrote in her progress notes that Appellant's assistance with meal preparation and cleanup; housework; shopping and errands; and laundry; should be removed because Appellant lives in a communal living environment with her son and, consequently, he assists her with those tasks informally. (Respondent's Exhibit D, page 5; Testimony of ██████████).
15. On ██████████ also sent Appellant a Decrease in Services form and asked her to verify her approval of a decrease in services to ██████████ hours per week due to the fact that informal supports were meeting her needs in homemaking, laundry, shopping/errands, medications, and meals. (Respondent's Exhibit A, pages 1-2; Testimony of ██████████).

16. On ██████████, Appellant's son telephoned ██████████r and indicated that they wanted to appeal the reduction. (Respondent's Exhibit D, page 2).
17. That same day, the Waiver Agency sent Appellant written notice that, in twelve days, her services would be reduced by █ hours per week. (Respondent's Exhibit B, pages 1-2).
18. As provided in that notice, the reduction was subsequently implemented. (Testimony of ██████████)
19. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-8).

### **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 ██████████, 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.

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, ██████ determined that Appellant's CLS should be reduced from ██████ hours per week to ██████ hours per week because only ██████ hours per week are medically necessary given Appellant's informal supports. In particular, ██████ testified that, because Appellant's son lives with Appellant in a communal living environment, he informally assists her with the tasks of meal preparation and cleanup; housework; shopping and errands; and laundry; and that those tasks can therefore be removed from Appellant's CLS.

In response, Appellant's witnesses testified that, regardless of what Appellant herself reported, the Waiver Agency incorrectly described Appellant's need for assistance in its assessment report and that ██████ should have primarily spoken with Appellant's caregivers rather than Appellant. They also testified that, as found by the Waiver Agency, there have been no improvements or changes in Appellant's medical conditions or needs that would justify a decrease in services.

Appellant bears the ultimate burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce her services while the Waiver Agency also bears the initial burden of going forward with sufficient evidence to show that its action is correct and in accordance with law and policy.

Here, for the reasons discussed below, the undersigned Administrative Law Judge finds that the decision to reduce Appellant's services must be reversed.

The Waiver Agency's witness testified that the reduction was based on the fact that Appellant's need for assistance with meals, housework, shopping and laundry were being met informally by Appellant's son and the policy that informal supports must be exhausted before the Waiver Agency will authorize services as the payor of last resort.

However, there is no evidence suggesting that Appellant's needs are being met by informal supports. Appellant's son is indeed providing the necessary assistance for the tasks identified by the Waiver Agency, but he is paid for that assistance through the Waiver Agency and is therefore providing formal support, as he has been previously authorized to do.

In converting the formal care provided by Appellant's son into informal care, the Waiver Agency appears to assume that, because Appellant and her son live together, he must be providing her with informal support with meals, housework, shopping and laundry.

However, the Waiver Agency fails to point to any specific policy that supports its position that a roommate must provide informal supports or that it can authorize fewer services simply because a beneficiary lives in a shared living arrangement. At most, the Waiver

Agency appears to argue that Appellant's services should be reduced because Appellant's son can assist Appellant in the identified tasks at the same time he is completing the tasks for himself. For example, he could prepare joint meals or combine their laundry into a single load. Nevertheless, while Appellant's son could provide such care informally, there is no evidence that he actually does. Moreover, while waiver services should only authorized for the benefit of Appellant, it is not clear why assistance with tasks that could benefit both Appellant and her son at the same time should be removed altogether, as opposed to being reduced, on the basis that the care provider may also benefit.

Appellant's son has been providing formal care to Appellant paid for by the Waiver Agency and there is no suggestion that Appellant's needs or services have changed. Moreover, the mere fact that Appellant's son also lives with Appellant is an insufficient basis to reduce Appellant's services or find that Appellant's son provides some of that previously-approved care on an informal basis. Accordingly, the Waiver Agency's decision to reduce Appellant's services 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 services.

**IT IS THEREFORE ORDERED** that:

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

*Steven Kibit*

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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.