

**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. 14-012433 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's wife ██████████ appeared and testified on the Appellant's behalf. Appellant was present but did not testify.

██████████, 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 reducing the Appellant's 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 ██████-year-old (DOB ██████████) Medicaid beneficiary who is enrolled in the MI Choice Waiver program. Appellant had been receiving ██████ hours per week of Community Living Supports (CLS) and a Personal Emergency Response (PERS) Unit. (Exhibit A, pp. 2, 8 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On ██████████, Appellant's Nurse Supports Coordinator met with Appellant and his daughter ██████████ who is his formal and informal caregiver, and conducted a reassessment to determine the Appellant's

- continued eligibility and current needs for services in the MI Choice Waiver Program. The Waiver Agents found the Appellant continued to eligible for the MI Choice Waiver program. After reviewing Appellant's need for services the Waiver Agency determined that his MI Choice Waiver Services should be reduced from █████ hours per week to █████ hours per week to more accurately reflect the hands-on care needed by the Appellant. (Exhibit A, pp. 2, and testimony).
4. On ████████████████████, a notice was sent to the Appellant indicating his self-determination hours would be reduced. (Exhibit A, pp. 3-4 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*, July 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.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].

The issue appealed is whether the Waiver Agency properly reduced the Appellant's CLS from █ hours per week down to █ hours per week. Appellant appealed the reduction in services.

The Waiver Agency established that on ██████████ ██████████, RN, Appellant's Nurse Supports Coordinator met with Appellant and his daughter and conducted a reassessment to determine the Appellant's continued eligibility and current needs for services in the MI Choice Waiver Program. The Waiver Agents found the Appellant continued to eligible for the MI Choice Waiver program. After reviewing Appellant's need for services, however, the Waiver Agency determined that his MI Choice Waiver Services should be reduced from █ hours per week to █ hours per week to more accurately reflect the hands-on care needed by the Appellant.

██████████ stated that she took over the Appellant's case in ██████████ or ██████████ of ██████████. She went to the Appellant's home on ██████████ and conducted a reassessment. ██████████ stated that the Appellant's condition had substantially improved since the previous assessment. ██████████ said during the home visit she assessed the Appellant for his functional status and his ability to complete his activities of daily living such as walking, bathing, and toileting. ██████████ said the Appellant was primarily independent in most of his ADLs. ██████████ then asked the Appellant and his daughter what type of services she was providing for the Appellant on a daily basis and what he could do for himself.

██████████ stated that she documented that the Appellant needs assistance with bathing, and he is primarily independent with transferring and other ADLs, or only requires minimal assistance. Appellant requires assistance with meal preparation because he has a special diet that he follows. He requires assistance with dressing in the mornings and in the evenings. Also his daughter takes him to the gym several times during the week. ██████████ then took the average time needed to complete the tasks for which the Appellant needed assistance, and she was able to come up with a total of █ CLS hours per week as the number of hours that would more appropriately meet the Appellant's need for services. Because the Appellant and his wife live in their daughter's home, Appellant's daughter provides additional informal supports. As a resident of the home, the Appellant's daughter would normally be responsible for many of the homemaking tasks that might otherwise be covered by MI Choice Waiver Services.

During the hearing, the Appellant's wife testified the Appellant cannot be alone and she is not able to take care of the Appellant. Appellant's wife said the Appellant has dementia

and has problems with falling. She said the Appellant will try to cook, but he has dementia and needs to be watched. She said the Appellant needs help bathing, changing his depends, and assistance getting up and down. Appellant's wife concluded by saying the [REDACTED] hours per week of CLS services is just not enough to care for the Appellant's needs.

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's wife did not establish that the Waiver Agency acted improperly when it reduced his MI Choice Waiver services. 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 services based on the information made available to the Waiver Agents at the time of the [REDACTED] assessment.

**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 reducing the Appellant's services under the MI Choice Waiver program.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

*William D Bond*

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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]

  
Docket No. 14-012433 EDW  
Hearing Decision & Order

**\*\*\* 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.

