

**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.: 14-013219 EDW
Case No.: ██████████**

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. upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████, Appellant's Spouse, appeared and testified on Appellant's behalf.

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

ISSUE

Did the Waiver Agency properly deny Appellant's request for an increase in Community Living Supports (CLS) from 16 hours per week to 25 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. (Testimony)

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4. Appellant lives with his spouse. The spouse provides some support. The Appellant's home in Detroit sold resulting in a financial gain. (Testimony)
5. As of [REDACTED], the Appellant was receiving 6 hours of support a week from the Veterans Affairs (VA). Between [REDACTED] 014 and [REDACTED], the VA hours was increased from 6 hours a week to 9 hours a week. (Testimony)
6. As of [REDACTED], the Appellant was eligible to receive respite care services through the VA. (Testimony)
7. As of [REDACTED], the [REDACTED] provided the Appellant with 16 CLS hours. (Testimony)
8. As of [REDACTED], the Appellant was eligible for nursing services through the Medicaid program. (Testimony)
9. On [REDACTED], the Appellant requested an increase in CLS hours from 16 to 25. (Exhibit A, p. 5; Testimony)
10. On [REDACTED], the [REDACTED] denied the Appellant's request for additional CLS hours. (Exhibit A, p. 2; Testimony)
11. On [REDACTED], the Michigan Administrative Hearing System received a request for hearing from Appellant.
12. On [REDACTED], the [REDACTED] increased the Appellant's CLS hours from 16 to 21.5 as they were recently informed that bathing was not being provided and that the Spouse was having difficulty assisting the Appellant. (Testimony)

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

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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.

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Community Living Supports do not include the cost associated with room and board.

Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2014, pp 12-13

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 25 CLS hours per week are medically necessary.

The Waiver Agency's Manager testified that on ██████████, Appellant's Spouse requested an increase in CLS hours from 16 hours per day to 25 hours per day. The Waiver Agency's Manager indicated that the request was denied because at the time the request was made, Appellant in addition to receiving 16 CLS hours from ██████████ was also receiving 6 hours of VA assistance but had not taken advantage of additional assistance offered from both the VA as well as nursing services offered through Medicaid.

The Appellant's Spouse testified that she is ██████ years old trying to care for her ██████ year old husband and is now having difficulty doing so as her own health has been deteriorating. The Spouse however did not specifically identify how the hours already being provided were insufficient or why she hadn't taken advantage of the additional time that is available through the VA.

Since the time the hearing was requested, the ██████ increased the Appellant's CLS hours from 16 to 21.5 as a result of discovering that bathing was not being provided and that the Appellant's Spouse was now having increased difficulty providing support for the Appellant.

The Appellant bears the burden of proving, by a preponderance of evidence that the Waiver Agency did not act properly in denying his request for additional MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted properly in denying an increase in the Appellant's MI Choice Waiver services on ██████████. Considering the Appellant's actual need for services and the failure to utilize additional services provided by both the VA and the MA program, the 16 hours of MI Choice Waiver services authorized by the Waiver Agency are sufficient to meet the Appellant's personal care needs.

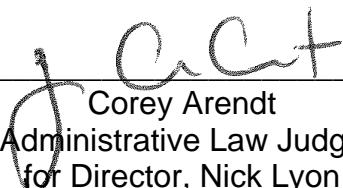
[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly denied Appellant's request to increase her CLS hours from 16 to 25 hours per week in [REDACTED].

IT IS THEREFORE ORDERED that:

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



Corey Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CA [REDACTED]

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.