

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

_____ /

Docket No. 14-013327 EDW
Case No. ██████████

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 hearing was held on ██████████. Attorney ██████████ appeared on Appellant's behalf. Appellant appeared as a witness.

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

ISSUE

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS) from 8 hours per week to 3 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, born ██████████. Appellant is diagnosed with COPD, arthritis, osteoporosis, history of stroke/CVA, seizure disorder, transient ischemic attack, urinary tract infections and severe allergies. (Exhibit A, pp 6, 12; Testimony)

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4. Appellant lives alone in an apartment. Appellant has no family or local informal supports. (Exhibit A, pp 5-7; Testimony)
5. Following an in-home reassessment on [REDACTED], the Waiver Agency determined that Appellant's CLS hours would be reduced from 8 hours per week to 3 hours per week based on Appellant's current needs for assistance. . (Exhibit A, pp 5-30; Testimony)
6. On [REDACTED], the Waiver Agency sent Appellant an Advance Action Notice informing her that CLS hours would be reduced from 8 hours per week to 3 hours per week, effective 12 days from the date of the notice. (Exhibit A, pp 3-4; Testimony)
7. On [REDACTED], the Michigan Administrative Hearing System received a request for hearing from Appellant. (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 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

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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.

*Medicaid Provider Manual
MI Choice Waiver Section
October 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.

The Waiver Agency witness testified that Appellant enrolled in the MI Choice Wavier program in ██████████ and that she has been her supports coordinator since ██████████. The Waiver Agency witness indicated that she conducted a reassessment with Appellant on

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██████████ and decided to reduce her CLS hours from 8 hours per week to 3 hours per week. The Waiver Agency witness testified that the majority of Appellant's CLS hours are used for transportation to purchase necessary products relating to her health conditions, but that it was believed that Appellant could purchase some of those products on-line. The Waiver Agency witness testified that Appellant's apartment is small, so that cleaning could be done in one hour per week, leaving two hours per week for transportation. The Waiver Agency witness indicated that she thought the allotted hours were a fair and responsible use of Medicaid dollars. The Waiver Agency witness testified that Appellant's physical abilities have not changed since her last assessment, that she can mostly provide for her own personal care, but needs assistance with some incidental activities of daily living, and that there was no change in Appellant's cognitive functions since the last assessment.

On cross-examination, the Waiver Agency witness indicated that staff has been asked to scrutinize clients' cases because of limited Medicaid funds. The Waiver Agency witness admitted that there have been no changes with Appellant in the past 6 months, but that she is just trying to be a better steward of Medicaid dollars. The Waiver Agency witness indicated that she believes Appellant does try to combine trips to limit the need for transportation. The Waiver Agency Witness testified that Appellant (and all clients) receive what services they need regardless of the cost. The Waiver Agency witness admitted that Appellant does not have a computer or internet, but that she is working with Appellant at this time to obtain both.

Appellant testified that she has had 8 CLS hours per week for many years and even those hours are not sufficient to meet all of her needs. Appellant indicated that she does not have a computer or the internet, and she would likely not be able to use a public computer because of her health problems. Appellant testified that because of her sensitivity to smoke and smells, her aide goes into stores before her to make sure the area is free of smoke or strong fragrances.

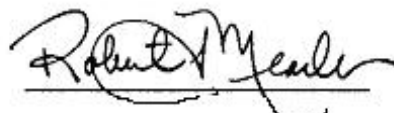
This ALJ finds that the Waiver Agency improperly reduced Appellant's CLS hours from 8 hours per week to 3 hours per week. The evidence presented demonstrated that there have been no changes in Appellant's cognitive or physical needs since the last assessment. Clearly, the reduction in CLS hours was based on the belief that Appellant might be able to buy some of the products she needs for her health conditions on-line, as opposed to being transported to the store to purchase those items. While that may be true, Appellant does not have a computer or the internet and likely would not be able to use a public computer due to her numerous allergies and medical conditions. Even if Appellant could use a public computer, she would need transportation to that public place anyway. If the Waiver Agency is able to procure a computer and assist the Appellant with obtaining internet, then a reduction might be appropriate. However, at this time, based on the evidence presented, such a reduction is inappropriate.

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 improperly reduced Appellant's CLS hours from 8 hours per week to 3 hours per week.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Acting Director
Michigan Department of Community Health

cc:

[REDACTED]

RJM [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.