

**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. 2014-12622 EDW
Case No. [REDACTED]

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on [REDACTED]. [REDACTED] appeared and testified. [REDACTED] appeared as a witness for Appellant.

[REDACTED] Director of Community and Clinical Services, represented the Department's MI Choice Waiver Agency, [REDACTED], of [REDACTED], MI. (Agency). [REDACTED], MI Choice Waiver Program Manager and [REDACTED], MI Choice Waiver Social Worker Care Manager appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce the Appellant's MI Choice Waiver 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. The Appellant is a [REDACTED] year-old male Medicaid beneficiary enrolled in the MI Choice Waiver program.
2. Appellant has a diagnosis of cerebral palsy (Exhibit A.8)
3. Appellant lives in an apartment accessible for persons with disabilities. (Exhibit A.5)
4. Appellant had been approved for 4 hours per day/7 days per week of

in-home Community Living Supports (CLS) Services which consisted of personal care and homemaking services. (Exhibit A.16)

5. On ██████████ a review/reassessment of Appellant for MI Choice Waiver services was completed. (Exhibit A)
6. During the reassessment it was noted that: Appellant was previously approved under LOC #1 due to limited assistance with transfers and bed mobility. The PCM observed Appellant transferred without assistance or difficulty; Appellant denied needing assistance with bathing or toileting. The PCM determined that Appellant qualifies under LOC #7, but that CLS hours can be decreased and still meet his needs. (Exhibit A.3)
7. After completing the reassessment, the Waiver Agency determined that the findings do not support a need for 4 hours per day of services but that Appellant needs reflect a need for 21 hours per week. (Agency Exhibit A.1)
8. On ██████████, The Waiver Agency sent to the Appellant an Advance Action Notice, stating that Appellant's services were going to be reduced to 21 hours per week. (Exhibit A.1)
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's hearing request, protesting the reduction of his MI Choice Waiver Services.

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

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 Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, 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)*

1915 (c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b)).

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)).

Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

- 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 HCFA as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(b)

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

The issue appealed herein is whether the Waiver Agency properly determined Appellant's program services hours. At reassessment on 11/7/13, the Waiver Agency determined that the assessment and review of the clinical and psychosocial findings do not show a need for 4 hours per day/7 days per week of personal care and homemaking services. The Waiver Agency stated that its assessment indicated that due to Appellant's functional limitations and independence, Appellant can function on fewer hours. Moreover, the Waiver agency stated that the Fresh Perspective provider documents submitted for service hours were used in making the 21 hour determination, and, in fact, Appellant had cancelled services on several occasions.

Appellant argued that he needs the same level of services hours or care.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing his services. In this case, Appellant has failed to meet his burden of proving that it is medically necessary that he receive 4 hours per day, 7 days per week. The Waiver Agency representative and witnesses provided evidence to establish that the results of the reassessment were based on a face-to-face interview with the Appellant, and Appellant's responses to questions posed during the reassessment. The Waiver Agency representative and witness testified that in an in-person MI Choice services review was conducted with the Appellant in his home. One of the Waiver Agency witnesses completed the reassessment of Appellant and explained that the results revealed that Appellant does not need assistance with transfers and bed mobility as the PCM observed Appellant transferring without assistance or difficulty. Moreover, Appellant denies the need for any assistance with bathing or toileting

The evidence on the record establishes that Appellant has significant medical issues which require him to have significant care. However, the Agency's evidence was credible and substantial and supported the current reassessment of hours.

In conclusion, the Waiver Agency provided sufficient evidence that its reduction of service hours was proper. Accordingly, the MI Choice Waiver Agency's decision must be upheld.

[REDACTED]
Docket No. 2014-12622 EDW
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly reduced Appellant's MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

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

 /s/
Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: April 7, 2014

Date Mailed: April 9, 2014

[REDACTED]
cc: [REDACTED]

***** NOTICE *****

The State Office of Administrative Hearing and Rules 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 State Office of Administrative Hearing and Rules 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.