

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2014-13147 EDW

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████, Appellant, appeared and testified. ██████████ Hospice Social Worker, appeared and testified as a witness on Appellant's behalf. ██████████, Registered Nurse (RN), represented the Department of Community Health's Waiver Agency, ██████████ in ██████████ ("Waiver Agency"). ██████████ ██████████, Social Worker/Supports Coordinator, and ██████████ RN/Supports Coordinator, testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce Appellant's MI Choice Waiver Program services at review?

FINDINGS OF FACT

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

1. Appellant is a ██████ year-old female who was diagnosed with coronary heart disease, chronic obstructive pulmonary disease (COPD), and hypertension. (Exhibit A, p 15).
2. Appellant is enrolled in and has been receiving MI Choice Waiver services in the form of personal care services ██████ hours per week at all times relevant to this matter. (Exhibit A)
3. Appellant started receiving Hospice services on ██████████. (Exhibit A).

4. ██████████ is a contract agent of the Michigan Department of Community Health (MDCH) and responsible for waiver eligibility determinations and the provision of MI Choice waiver services to Appellant.
5. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice, stating that her Community Living Supports (CLS) Services were going to be reduced by █ hours to █ hours per week for the reason that Appellant had started receiving Hospice services, which would result in Hospice providing a bath aide to Appellant █ days per week. (Exhibit A, p. 3)
6. On ██████████, the Department received Appellant's request for an administrative hearing, protesting the proposed reduction in hours.
7. The Waiver Agency's action was deleted pending the hearing.

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 Health Options, 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 440.180(b))

Appellant has been receiving CLS through the Waiver Agency. 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.

*MPM, October 1, 2013 version
MI Choice Waiver Chapter, pages 12-13*

However, while CLS is a covered service, 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, it is undisputed that the Appellant has a need for MI Choice Waiver services. Appellant has been receiving █ of CLS services through the Waiver Agency. However, the Waiver Agency determined that Appellant no longer needs █ hours of services because effective ██████████, Appellant started received Hospice services. Hospice sends a bath aide to assist Appellant with her bathing █ days per week.

Appellant testified that she has known her current caregiver for █ years, and this caregiver provides services to Appellant's husband also. Appellant testified that it will be hard for her to trust someone else giving her bath since she won't know the person. Appellant's witness testified that Appellant has established a relationship with her current care provider and wants to maintain the same routine with this provider.

This Administrative Law Judge must uphold the Waiver Agency's decision. Appellant is only entitled to services which are medically necessary. Additionally, while as an Administrative Law Judge, I have the authority to order the Department through the Waiver Agency to authorize medically necessary, Medicaid covered services, I cannot order that these services be provided by a particular provider or at a specific location. In this case, Appellant is receiving personal care services through Hospice █ days per week. The Waiver Agency must coordinate services with Hospice to avoid duplication in services. Therefore, the █ hour reduction in MI Choice Waiver CLS services per week was proper.

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/

Marya A. Nelson-Davis
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

MAND/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.