

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS 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. 2014-15180 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 ██████████. ██████████, Appellant's Authorized Hearing Representative and sister appeared and testified on Appellant's behalf.

██████████, RN, BSN, Clinical Manager, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the ██████████. (██████ or Waiver Agency)

ISSUE

Did the MI Choice Waiver Agency properly deny the Appellant's request for additional hours of personal care and homemaking?

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 Medicaid beneficiary, born ██████████, who is diagnosed with diabetes and is a double amputee. (Exhibit A, p 14; Testimony)
2. The Department contracts with the ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
3. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
4. Appellant lives in a single family home with his two sons, ages ██████ and ██████.

Appellant is married, but his wife is currently out of the home taking care of her own ill mother. Appellant receives informal supports from his family. (Exhibit A, p 16; Testimony)

5. During a routine home reassessment on ██████████, Appellant requested additional hours for personal care and homemaking. Appellant's care manager requested an itemized list of additional tasks the hours would be used for. Appellant's care manager received the list on ██████████, but the list did not support an increase in services because Appellant's level of services had not changed. (Exhibit A, p 2; Testimony)
6. Appellant currently receives 21 personal care and homemaking hours per week. (Exhibit A, pp 2, 15-16; Testimony)
7. On ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing him that his request for additional personal care and homemaking hours was denied. The Notice contained Appellant's rights to a fair hearing. (Exhibit A, pp 3-4; Testimony)
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for a hearing. The request for hearing related to an ongoing request for environmental modifications in the home. It was explained to Appellant's sister that the environmental modification had not been approved or denied yet, so the appeal on that issue was premature. Appellant's sister indicated that she would still like to go ahead with a hearing regarding the denial of additional personal care and homemaking hours. (Exhibit 1; 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 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*, January 1, 2014, 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.

* * *

4.1.B. HOMEMAKER

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance) provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator.

4.1.C. PERSONAL CARE

Personal Care services encompass a range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the participant) or cueing to prompt the participant to perform a task. Personal Care services are provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law.

Services provided through the waiver differ in scope, nature, supervision arrangement, or provider type (including provider training and qualifications) from Personal Care services in the State Plan. The chief differences between waiver coverage and State Plan services are those services that relate to provider qualifications and training requirements, which are more stringent for personal care provided under the waiver than those provided under the State Plan.

Personal Care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. These services may also include assistance with more complex life activities. The service may include the preparation of meals but does not include the cost of the meals themselves. When specified in the plan of service,

██████████
Docket No. 2014-15180 EDW
Hearing Decision & Order

services may also include such housekeeping chores as bed making, dusting, and vacuuming that are incidental to the service furnished or that are essential to the health and welfare of the participant rather than the participant's family. Personal Care may be furnished outside the participant's home.

Medicaid Provider Manual
MI Choice Wavier Section
January 1, 2014; pp 9-10

Additionally, the MI Choice contract between the Department of Community Health and the ██████, Attachment H, states that services are "provided only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other relative, caregiver, landlord, community/volunteer agency, or third party payer is capable of or responsible for their provision." (Exhibit A, p 5)

Appellant requested that he receive additional personal care and homemaking hours and his request was denied. Appellant bears the burden of proving, by a preponderance of evidence that he is entitled to the additional hours of personal care and homemaking he is requesting.

The Waiver Agency's Clinical Manager testified that during a routine home reassessment on ██████████, Appellant requested additional hours for personal care and homemaking. The Waiver Agency's Clinical Manager indicated that Appellant's care manager requested an itemized list of additional tasks the hours would be used for, however, when she received the list on ██████████, the list did not support an increase in services because Appellant's needs had not changed. The Waiver Agency's Clinical Manager testified that Appellant currently receives 21 personal care and homemaking hours per week. Given the above, the Waiver Agency's Clinical Manager indicated that on ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing him that his request for additional personal care and homemaking hours was denied. The Waiver Agency's Clinical Manager indicated that the number of hours approved was based on the most recent functional assessment and the contract language cited above. The Waiver Agency's Clinical Manager indicated that because Appellant lives in a household with other family members, tasks such as cooking, running errands, and shopping are shared services for which Appellant would not receive additional hours. The Waiver Agency's Clinical Manager also testified that the Waiver Agency questioned the Appellant's request for time to pay bills three times per week.

Appellant's sister testified that as of ██████████, Appellant is a double amputee all the way up to his hip, so his condition has worsened since the last functional assessment. Appellant's sister indicated that Appellant lives with his two sons, ages ██████ and ██████, and that Appellant's wife is frequently absent because she is busy taking care of her own ill

mother. Appellant's sister testified that she had to quit her job so that she could take care of Appellant, which she does for at least 5 hours every day. Appellant's sister indicated that cooking is not shared because Appellant is a severe diabetic and needs a special diet. Appellant's sister indicated that she does spend 3-4 hours every day cooking for Appellant and she does not cook at all for her nephews during that time. Appellant's sister indicated that she stops at the drug store on Appellant's behalf on a daily basis as well. Appellant's sister indicated that paying Appellant's bills does take a long time because of all the judgments against Appellant and all the creditors making claims. Appellant's sister indicated that the time requested for this service also includes time to go to court on Appellant's behalf. Appellant's sister testified that Appellant needs way more than 21 hours per week in care hours.

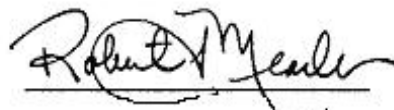
This ALJ finds the MI Choice Waiver Agency properly denied the Appellant's request for additional hours for personal care and homemaking, based on the last functional assessment and the contract language cited above. The evidence presented demonstrates that, at the time of the last assessment, Appellant's needs had not changed since his last assessment, so there can be no medical justification for additional hours. It also appears that Appellant has a very supportive family who are willing and able to provide care to Appellant. Should Appellant's condition worsen, as it seems to have since the last assessment, he can always request another assessment. The Waiver Agency also has offered Appellant's family some alternatives if they feel the current hours are insufficient.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly denied the Appellant's request for additional hours for personal care and homemaking.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is **AFFIRMED**.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2014-15180 EDW
Hearing Decision & Order

cc:

[REDACTED]

[REDACTED]

Date Signed: January 29, 2014

Date Mailed: January 29, 2014

***** 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.