

**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

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Docket No. 2014-16622 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 appeared on his own behalf.

██████████, Program Manager, represented the Department's MI Choice Waiver Agency, The Senior Alliance 1-C, (Waiver Agency or Senior Alliance). ██████████, RN, Supports Coordinator, appeared as a witness for the Waiver Agency.

**ISSUE**

Did the MI Choice Waiver agency properly reduce Appellant's personal care hours through self-determination (SD) from 40 hours per week to 7 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. Appellant is a ██████ year old Medicaid beneficiary, born ██████████. (Exhibit A, p 2)
2. Appellant has a primary diagnosis of Dystrophic Epidermolysis Bullosa (EB), which results in skin ulcerations and blistering of his hands, elbows, feet, knees, shoulder and lower back. Ulcers and blisters can also occur internally, and can affect his throat, esophagus, airways and organs. Appellant requires extensive preparation of dressings for his wounds, daily dressing changes and wound care. Appellant also has a history of Traumatic Brain Injury from a car accident in ██████, Tietze's Disease (Costochondritis), Esophageal strictures, Protein/Iron deficiency, Anemia,

Hypothyroidism, Hypogonadism (Low Testosterone), Ankyloglosis, Microstomia, bilateral contractures of hands and fingers and bilateral cavus feet. (Exhibit A, pp 11-12; Testimony).

3. Appellant lives with his parents in a single family home. Appellant's mother is an RN and is his primary self-determination (SD) worker. Both parents act as Appellant's primary informal supports. Both parents work full-time outside of the home. Appellant's father is home by the early afternoon and helps informally at that time. (Exhibit A, pp 7, 10-11; Testimony).
4. On [REDACTED], the Waiver Agency conducted a reassessment of Appellant's needs. Following the reassessment, the Waiver Agency determined that Appellant's needs could be met with 7 hours per week of SD hours, as opposed to the 40 SD hours per week Appellant had previously been receiving. The Waiver Agency determined that Appellant is unable to perform independently: buttons, snaps, opening jars, and pouring bleach for laundry. Appellant also reported that his SD worker measures his wounds once per month and gives injections twice per month. Appellant reported that he continues to have the ability to work at his part-time job and is able to independently complete: bed mobility, transfers, bathing, toileting, ambulation, dressing with the exception of snaps and buttons, driving/transportation, and meal preparation with the exception of opening jars/containers. Appellant reported that he needs some assistance from his SD worker with medication set up. The Waiver Agency determined that SD services would be allocated to meet Appellant's medical needs as follows: 15-30 minutes per day for meal preparation / opening containers and 15-30 minutes per day assisting with dressing and laundry. (Exhibit A, pp 1-22; Testimony).
5. The Waiver Agency continued Appellant's private duty nursing hours at 12 hours per week. Care performed by the LPN is allocated 4 hours per day three days per week to set up the dressings for Appellant's wounds. Appellant is able to change his own dressings daily. (Exhibit A, pp 1, 16-19; Testimony)
6. On [REDACTED], the Waiver Agency mailed Appellant an Advance Action Notice informing him that his SD services would be reduced from 40 hours per week to 7 hours per week. The notice included Appellant's rights to a Medicaid Fair Hearing (Exhibit A, pp 39-40; Testimony).
7. Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (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.

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- 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 Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards include personal care services and homemaker services.

The MI Choice Waiver defines Personal Care services as follows:

“...assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . .”

*Michigan Medicaid Provider Manual*  
*MI Choice Waiver Section*  
*October 1, 2013, Pages 9-11*

The Waiver Agency's witness testified that on [REDACTED], she conducted an in-home reassessment of Appellant's needs. Following the reassessment, the Waiver Agency witness determined that Appellant's needs could be met with 7 hours per week of SD hours, as opposed to the 40 SD hours per week Appellant had previously been receiving. The Waiver Agency witness testified that Appellant informed her that he is unable to perform the following tasks independently: buttons, snaps, opening jars, and pouring bleach for laundry and that his SD worker measures his wounds once per month, gives him injections twice per month, and assists with medication set up. The Waiver Agency witness testified that Appellant reported that he continues to have the ability to work at his part-time job and is able to independently complete: bed mobility, transfers, bathing, toileting, ambulation, dressing with the exception of snaps and buttons, driving/transportation, and meal preparation with the exception of opening

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jars/contains. Based on the assessment, the Waiver Agency witness determined that Appellant's needs could be met with 7 care hours per week, allocated as follows: 15-30 minutes per day for meal preparation / opening containers and 15-30 minutes per day assisting with dressing and laundry.

The Waiver Agency witness further testified that she continued Appellant's private duty nursing hours at 12 hours per week. The Waiver Agency witness indicated that the care performed by the LPN is allocated 4 hours per day three days per week to set up the dressings for Appellant's wounds but that Appellant is able to change his own dressings daily.

The Waiver Agency witness also indicated that according to Attachment K to the Waiver Agency Contract with the Department, "Generally, MI Choice services are not used to replace existing unpaid supports, but rather bolster and help sustain ongoing allies' involvement." (Exhibit A, p 50). The Waiver Agency witness testified that they relied on this provision in Appellant's case because he lives with his parents, who are able to provide significant informal supports.

Appellant testified that his parents are no longer legally responsible for him because he is over 18 years of age and if he did not have their assistance, he would be in a nursing home. Appellant indicated that he informed the Waiver Agency that he could not do any laundry at all and that his laundry alone takes over 2 hours per day to complete. Appellant testified that he is getting worse this year and has had to reduce his part-time work schedule to 10-15 hours per week, which he can only complete by taking frequent rest breaks. Appellant indicated that as far as grocery shopping he can only pick up a few items at a time and as far as meal preparation he can only heat things up in the microwave. Appellant also indicated that he needs assistance with his medication set up three times per day and that he is no longer driving because his condition has worsened recently. Appellant indicated that he needs care around the clock.

With his request for hearing, Appellant submitted three letters from his doctors, all of whom indicated that Appellant requires at least 40 personal care hours per week. Appellant also included a detailed list of all of the wound care supplies he needs ordered and managed each month, as well as a detailed description of his medical history. Appellant also included a detailed list of all of the services that his care giver has to provide; the list runs four pages long, single spaced. In addition to the activities the Waiver Agency did take into account during the most recent assessment, the list indicates that Appellant also needs, among other things, extensive assistance with dressing, laundry (including washing, with bleach, Appellant's bedding every day), cleaning and sterilization of the bathroom and household generally, meal preparation, meal cleanup, cleaning Appellant's ears, removing dry scabs on wounds that Appellant cannot reach himself, cutting his hair, ordering and maintaining wound supplies, medication setup, and shopping. Appellant also included documentation showing that his mother/SD worker has to take leave under the Family and Medical Leave Act (FMLA) in order to meet Appellant's needs. Finally, Appellant submitted numerous pictures of the wounds he suffers from. (See Exhibit 1 and attachments)

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Prior to the hearing, Appellant submitted a 14 page document summarizing his argument and indicating why he should still be entitled to 40 personal care hours per week. Appellant indicated in the document that has been approved for 40 personal care hours per week since [REDACTED] and his condition has only gotten worse since that time, not better. Appellant also reviewed and pointed out numerous discrepancies within the hearing summary submitted by the Waiver Agency. Of note in this section is the summary from prior assessments conducted by the Waiver Agency, which more accurately reflect Appellant's needs. Appellant also claimed that his Supports Coordinator told him prior to doing the assessment that his personal care hours would need to be cut due to cuts in State funding. (Exhibit 2)

This ALJ finds that the Waiver Agency improperly reduced Appellant's personal care hours from 40 hours to 7 hours per week. It is clear from the summaries contained in prior assessments that Appellant's needs were not properly documented or considered in the most recent assessment and it is also clear that Appellant's condition has not improved since the last assessment; if anything, Appellant's condition has gotten worse. As indicated above, in addition to the tasks the Waiver Agency did take into account during the most recent assessment, Appellant also needs extensive assistance with dressing, laundry (including washing, with bleach, Appellant's bedding every day), cleaning and sterilization of the bathroom and household generally, meal preparation, meal cleanup, cleaning Appellant's ears, removing dry scabs on wounds that Appellant cannot reach himself, cutting his hair, ordering and maintaining wound supplies, medication setup, and shopping. The Waiver Agency had access to this information from prior assessments and it would be unreasonable to think that anyone could accomplish all of those tasks in 7 hours per week. While Appellant's parents are able to provide informal supports to Appellant, informal supports should not account for the majority of his medical needs.

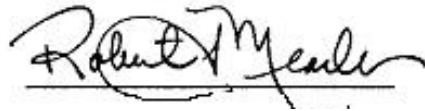
As such, Appellant has proven, by a preponderance of the evidence, that a reduction in his personal care hours was improper.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds that the MI Choice Waiver Agency improperly reduced Appellant's personal care hours.

**IT IS THEREFORE ORDERED** that:

The MI Choice Waiver Agency's decision is REVERSED.



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

cc:



RJM/skb

Date Signed: 1/28/2014

Date Mailed: 1/28/2014

**\*\*\* 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.