

**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. 2014-23988 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]. Appellant [REDACTED] appeared and testified. [REDACTED] appeared as a witness for Appellant.

[REDACTED], Director of Community and Clinical Services, represented the Department's [REDACTED] (Agency). [REDACTED], Nurse Support Coordinator, appeared as a witness 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] female Medicaid beneficiary enrolled in the MI Choice Waiver program.
2. Appellant has been diagnosed with multiple impairments, including COPD, HBP, vascular arthritis, anxiety, depression, diabetes, fibromyalgia, cardiac, history of brain injury.
3. Appellant had previously been approved for 21 hours (2 days at 8 hours, 1 day at 5). On [REDACTED] the Agency issued notice that Appellant's hours were being reduced to 15 hours per week. (Exhibit A.4)

4. The individual who prepared the hearing packet did not present the evidence at the administrative hearing; the Agency's presentation was factually intensive, and confusing.
5. Appellant's worker testified that due to the case being reassigned, Appellant request that they meet and review her case. At that meeting, the Agency determined that Appellant did not need 21 hours for personal care and homemaking services but could get by on 15 hours per week for personal care and showers; linen changes and laundry; meal preparation; and general housework. Appellant was also approved for 200 miles per month for transportation. (Exhibit A.3) The Department's determination was in large part due to the worker's understanding regarding Appellant's statements that "...she wanted 8 hours together for the benefit of her workers and not based on her needs...and that she states that she needs someone to let me vent and calm my anxiety." (Exhibit A.3)
6. The Agency submitted 28 pages of policy and progress notes supporting its new determination. (See Exhibit A.28)
7. On ██████████, The Waiver Agency sent to the Appellant an Advance Action Notice, stating that Appellant's services were going to be reduced to 15 hours per week. (Exhibit A.4)
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's hearing request, protesting the reduction of her 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 ██████████, 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.

The 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 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))

The Michigan Department of Community Health, Medical Services Administration issued bulletin number MSA 11-27 on July 1, 2011, effective August 1, 2011, for the purpose of adding a MI Choice Policy Chapter to the Medicaid Provider Manual. This new policy chapter provides in part:

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, i.e., 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 person) or cueing to prompt the participant to perform a task. Personal Care services may be 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, 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.

(MSA 11-27, pages 10-11)

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 a meeting with Appellant, the worker gathered information from Appellant and reviewed it in conjunction with the most recent assessment of ██████████. The new assessment determined personal care hours, laundry, meals and general housework totaling 15 hours per week. Appellant argued that she needs more assistance in transportation, aid with her anxiety, and supports generally that may be considered informal. The Agency sufficiently rebutted that some of Appellant's arguments do not fit the definition of "medical necessity" required by federal and state law. Moreover, some of the informal supports are not of the type of services offered through the program at issue.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing her services. In this case, Appellant has failed to meet her burden of proving that it is medically necessary that she receive the 21 hours previously approved 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 contact.

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

This ALJ wishes to note that while this ALJ may have come to a different conclusion, the purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. As the Department's determination can reasonably be supported by federal, state and administrative authority, this ALJ must uphold the Agency's determination.

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: 04/11/2014

Date Mailed: 04/14/2014

JS/ [REDACTED]

[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.