

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. 2014-26338 EDW

██████████

██████████

██████████

Appellant

_____ /

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, the Appellant's daughter, appeared and testified for the Appellant. ██████████ the Appellant's son-in-law also testified for the Appellant.

██████████, Clinical Manager, appeared and testified on behalf of the Department of Community Health's (Department) Waiver Agency, the ██████████. ██████████ RN, Supports Coordinator also testified on behalf of the Department of Community Health's (Department) Waiver Agency.

ISSUE

Did the Department's Waiver Agency properly reduce 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 an ██████-year-old, (DOB: 1██████████), who is enrolled in the MI Choice Waiver Program. (Exhibit A, pp. 5, 16, Exhibit 1, p. 2 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).

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3. On ██████████, RN Supports Coordinator, and ██████████, Social Work Supports Coordinator, met with Appellant in her home along with the Appellant's daughter for a reassessment to determine the Appellant's continued eligibility for the MI Choice Waiver program and her current needs for services. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) and found Appellant continued to be eligible for the MI Choice Waiver program under Doors 1 & 2, but determined that her MI Choice Waiver Services should be reduced from ██████ hours per week to ██████ hours per week to more accurately reflect the hands-on care needed by the Appellant. (Exhibit A, pp. 2, 5-10, 15, 16-30 and testimony).
4. On ██████████ Appellant was sent an Advance Action notice advising her that her MI Choice Waiver Services would be reduced from ██████ hours per week down to ██████ hours per week, ██████ days from the date of the notice. Appellant was advised of her rights to a Medicaid Fair Hearing. (Exhibit A, pp. 3-4 and testimony).
5. On ██████████ MAHS received the Appellant's request for an Administrative Hearing. (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 requested 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 (CMS, 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)].

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The policy regarding enrollment and provision of services for the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2014, which provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1, emphasis added).

* * *

SECTION 2 - ELIGIBILITY

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility

requirements on an ongoing basis to remain enrolled in the program. (p.1, emphasis added).

* * *

2.2.A. MICHIGAN MEDICAID NURSING FACILITY LEVEL OF CARE DETERMINATION

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination. The LOCD is available online through Michigan's Single Sign-on System. Refer to the Directory Appendix for website information. Applicants must qualify for functional eligibility through one of seven doors.

These doors are:

- Door 1: Activities of Daily Living Dependency
- Door 2: Cognitive Performance
- Door 3: Physician Involvement
- Door 4: Treatments and Conditions
- Door 5: Skilled Rehabilitation Therapies
- Door 6: Behavioral Challenges
- Door 7: Service Dependency

The LOCD must be completed in person by a health care professional (physician, registered nurse (RN), licensed practical nurse (LPN), licensed social worker (BSW or MSW), or a physician assistant) or be completed by staff that have direct oversight by a health care professional.

The online version of the LOCD must be completed within fourteen (14) calendar days after the date of enrollment in MI Choice for the following:

- All new Medicaid-eligible enrollees
- Non-emergency transfers of Medicaid-eligible participants from their current MI Choice waiver agency to another MI Choice waiver agency

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- Non-emergency transfers of Medicaid-eligible residents from a nursing facility that is undergoing a voluntary program closure and who are enrolling in MI Choice

Annual online LOCDs are not required; however, subsequent redeterminations, progress notes, or participant monitoring notes must demonstrate that the participant continues to meet the level of care criteria on a continuing basis. If waiver agency staff determines that the participant no longer meets the functional level of care criteria for participation (e.g., demonstrates a significant change in condition), another face-to-face online version of the LOCD must be conducted reflecting the change in functional status. This subsequent redetermination must be noted in the case record and signed by the individual conducting the determination. (pp. 1-2).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

SECTION 4 – SERVICES

* * *

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.

* * *

Personal Care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. These services may also include

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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. (p. 10, emphasis added).

* * *

4.1.H. CHORE SERVICES

Chore Services are needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Other covered services might include yard maintenance (mowing, raking and clearing hazardous debris such as fallen branches and trees) and snow plowing to provide safe access and egress outside the home. These types of services are allowed 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 or volunteer agency, or third party payer is capable of, or responsible for, their provision. (p. 12, emphasis added).

The Waiver Agency provided evidence that on ██████████, RN, Nurse Supports Coordinator, and Sue Probert, Social Work Supports Coordinator, met with Appellant in her home along with the Appellant's daughter for a █████-day reassessment to determine the Appellant's current needs for services in the MI Choice Waiver Program. ██████████ stated she completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). They found the Appellant continued to be eligible for the MI Choice Waiver program under Doors 1 & 2. However, based on the reassessment and a "Daily Worksheet – Time Study" prepared by the vendor All Valley Home Care (See Exhibit A, p.11), the Waiver Agency determined that the Appellant's MI Choice Waiver Services should be reduced from █████ hours per week to █████ hours per week to more accurately reflect the hands-on care needed by the Appellant. Appellant's daughter was asked to prepare a █████-day diary of task performed by the Appellant's caregivers, but she refused. (See Exhibit A, p. 13 and testimony).

██████████ stated they had received notes from ██████████ with ██████████ stating that the Appellant's caregiver was asked by the Appellant's daughter to help make a quit for the daughter's personal use, and there was also a vendor report that the Appellant's daughter was using vendor workers to do dishes, laundry and housekeeping for the whole family as the Appellant lives in a shared household. (See Exhibit A, pp. 2, 14 and testimony).

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Appellant's daughter testified that she was upset about the notes and report from ██████ stating that she tried to get the workers to help with making a quilt or to do tasks for the whole household. Appellant's daughter stated these were lies, the reports were not true. Appellant's gave examples, such as what if the workers would move her laundry to the dryer, or what if they did some of the family's dishes, what could she do. Appellant's daughter denied asking the Appellant's caregivers to do the things reported by the vendor ██████. Appellant's daughter indicated she only asked for ██████ hour per week for her mother's care because the social workers have all said she needs the hours. She further stated she only needed ██████ more hours per week not the whole ██████ hours requested. Appellant's daughter stated she doesn't want to put her mother into a nursing home. She claimed they are only cutting the hours because the Agency had a cut in their budget. Appellant's daughter stated she is suffering from having to deal with her mother's care, and just can't do everything for her mother.

Appellant's daughter's husband testified that he is not around during the day and can't testify as to what the workers were asked to do. He said he did not mind that they lowered the hours for the Appellant, but just thinks they lowered them too far. He said they have been caring for the Appellant for ██████ years, and it is very hard on his wife. The husband stated the Appellant was put in a nursing home before, but it was a nightmare since she kept going into the hospital and his wife had to keep going to the nursing home to help care for the Appellant. The husband stated they reduced the Appellant's hours too much. They don't need ██████ hours per day; that they would accept an additional two hours per day.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly reduce her MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted properly when it reduced the Appellant's MI Choice Waiver services. The Agency conducted a proper reassessment on ████████████████████ and considered the vendor's time study reflecting the number of hours needed to properly care for the Appellant's individual needs. The Appellant's daughter was given the opportunity to do such a study, but refused to do so. The evidence presented in this case demonstrates that the hours of service authorized by the Waiver Agency are sufficient in amount, scope, and duration to meet the current needs of the Appellant.

DECISION AND ORDER

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

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IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.