

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:

██████████,

Appellant

Docket No. 2014-30757 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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████ and ██████████, appeared as witnesses for Appellant.

██████████, Clinical Manager, and ██████████, Social Worker Supports Coordinator, appeared on behalf of the Department's Waiver Agency, ██████████ of ██████████, Michigan (Agency or Waiver Agency).

ISSUE

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS) from 16 to 9.25 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. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
2. The Waiver Agency must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. Appellant is a ██████ year-old Medicaid beneficiary. Appellant's diagnoses include CAD, gait impairment, COPD, diverticulitis, severe OA.
4. Appellant lives at ██████████-a senior living community which assists

with certain household chores including daily bed and trash; weekly deep clean; weekly laundry; and 3 meals daily. The Department in part pays for certain portions of Appellant's residency and care associated with that placement.

5. At all relevant times prior to the negative action herein, Appellant was a recipient of 16 hours per week for personal care paid for by the MI Choice waiver program, in addition to the activities provided by ██████████.
6. On ██████████, the Agency performed a reassessment for review. The Agency determined at that time that there was duplication in homemaking and meals performed by ██████████.
7. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice informing her that her CLS hours would be reduced from 16 hours per week to 9.25 hours. (Testimony)
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. In her request for hearing, Appellant stated in part that she did not agree with the reduction, that due to health challenges she needs more hours with bathing, that due to dietary restrictions she cannot always eat the ██████████ meals, and that she needs someone to put away her laundry. Appellant also indicated that she often has accidents, which she had not previously reported.
9. Appellant requested that the record be held open in order to submit documents not previously submitted. Respondent did not object. The record closed ██████████.

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*, 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. [p. 9].

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.

*Medicaid Provider Manual
MI Choice Waiver Section
April 1, 2013, pp 12-13*

The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. 42 CFR 440.230. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

Appellant bears the burden of proving, by a preponderance of evidence, that 16 hours per week of CLS hours are medically necessary.

Appellant's Case Manager testified that at the in-home reassessment on ██████████, it was determined that there were duplicate services being provided, and thus a reduction was indicated. Appellant disputes any duplication in services, and argues that she also has health conditions and care needs that have worsened.

Appellant also indicated at the administrative hearing that she attempted unsuccessfully to fax exhibits. The ALJ held the record open to give Appellant an opportunity to fax Exhibits she felt were necessary for the administrative hearing.

In this case, the Respondent's Exhibit A and progress notes fully and specifically corroborate the reduction in hours.

Appellant argued that ██████████ does not put her laundry away and that she needs help with putting away the laundry. The Respondent indicated that the CLS program is a person-centered program, and Appellant may use her hours in varying ways for her needs.

Appellant also argued that she has cleaning and bathroom needs 3 to 4 times per week. The Respondent indicated that Appellant had not previously this, which could affect the amount of hours.

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.

After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole. Appellant's arguments were not supported by any evidence or authority that would sufficiently rebut the Department's evidence. As to any new medical issues, Appellant may request another increase; however, this review must focus on the evidence in existence at the time the Agency made its determination.

As to the Exhibits Appellant faxed after the hearing, they are either already in the record, irrelevant, or contain new information which the Agency did not have at the time it made its determination. While Appellant may want to submit these in the future, this ALJ has no authority to review or make decisions based on any evidence that was not in existence or submitted to the Department at the time it made its determination.

In addition, as noted above, Appellant must present evidence that meets a preponderance of evidence standard that what she is requesting is medically necessary, and, that the Agency be the payor of the last resort. Medicaid covered services. *42 CFR 440.230*. Moreover, ICLS 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. *Medicaid Provider Manual*

MI Choice Waiver Section
April 1, 2013, pp 12-13

This ALJ finds that Appellant does not meet this standard and thus, the Agency's actions are upheld.

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 Appellant's CLS hours from 16 to 9.25 hours per week.

IT IS THEREFORE ORDERED that:

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

Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

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Decision & Order**

JS/ [REDACTED]

cc: [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.