

**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.** 2014-32283 EDW

██████████

██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, Appellant's sister, appeared and testified on Appellant's behalf. Appellant; ██████████ Appellant's mother; ██████████, Appellant's father; ██████████, Appellant's caregiver; ██████████; Appellant's friend; ██████████, the owner of ██████████ ██████████ and ██████████; Appellant's friend; were also present or testified as witnesses for Appellant. ██████████ Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████████").

Following the completion of the hearing, the record was left open for ██████████ weeks so that Appellant could have the opportunity to submit additional evidence.

**ISSUE**

Did the Waiver Agency properly decide to reduce Appellant's 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. ██████████ is a contract agent of the Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Appellant is a ██████████ year-old Medicaid beneficiary who has been diagnosed with multiple sclerosis, quadriplegia, and depression. (Respondent's Exhibit F, page 1).
3. Appellant has been receiving services through the Waiver Agency ██████████ hours a day, ██████████ days per week, including ██████████ hours of Community Living

Supports (CLS) and █████ hours of Private Duty Nursing (PDN) per day. (Testimony of Appellant's representative; Testimony of █████).

4. Through an arrangement with Appellant and her care provider agency, █████ the daily CLS is provided by one live-in CLS worker, with substitute workers coming in on the worker's █████ to █████ days off each month, at a special reduced rate. (Respondent's Exhibit F, page 4; Respondent's Exhibit G, page 6).
5. On █████, a registered nurse/care manager at █████, performed a routine reassessment in Appellant's home with Appellant, Appellant's parents, and Appellant's caregiver. (Respondent's Exhibit F, pages 1-16).
6. During that assessment, it was noted that Appellant continues to be totally dependent on others for all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Respondent's Exhibit F, page 16).
7. It was also noted that Appellant continues to require the assistance of a nurse for medication management, daily wound care, urostomy irrigations, and a bowel program. (Respondent's Exhibit F, page 14).
8. █████ further noted that Appellant remains eligible for the program and cannot be left alone. (Respondent's Exhibit F, pages 15-16).
9. Following the assessment, Appellant's services initially remained in place. (Respondent's Exhibit G, pages 8-9).
10. However, on or about █████, the Waiver Agency ultimately determined that Appellant's service arrangement, including the special rate being used, did not comply with the Waiver Agency's contract with the Michigan Department of Community Health and that her services must change. (Respondent's Exhibit G, pages 6-7).
11. The Waiver Agency also determined around that time that a service level of █████ hours per day could appropriately address Appellant's needs. (Respondent's Exhibit G, page 6).
12. Appellant's care provider agency declined to participate in any other arrangement for services and Appellant's case manager began discussing different options with Appellant. (Respondent's Exhibit G, pages 4-5; Testimony of █████).
13. On █████, the Waiver Agency sent Appellant █████ negative action notices. (Respondent's Exhibit A, pages 1-2; Respondent's Exhibit B, pages 1-2).

14. In one of those notices, the Waiver Agency stated that Appellant's care provider agency would be terminating services in ██████ days. (Respondent's Exhibit B, page 1).
15. In the other notice, the Waiver Agency stated that, following a review of Appellant's long term care needs, it had been determined that Appellant's CLS would be reduced in ██████ days. (Respondent's Exhibit A, page 1).
16. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, page 1).
17. In that request, Appellant's representative asserts that Appellant needs around-the-clock care and that it would be dangerous to reduce her CLS from ██████ hours per day to █ hours per day. (Petitioner's Exhibit 1, page 1).
18. Given the timing of Appellant's appeal, the proposed reduction was not implemented and her services have remained in place while the appeal is pending. (Respondent's Exhibit G, pages 1-3; Testimony of Appellant's representative; Testimony of ██████).
19. Moreover, through at least the date of the hearing, the services were still being provided by ██████████. (Respondent's Exhibit G, pages 1-3; Testimony of Appellant's representative).
20. On ██████████, the Waiver Agency sent Appellant a letter in which it proposed that ██████ provide █ hours of PDN daily; █ hours of CLS daily; and an overnight stipend for █ hours per night. (Respondent's Exhibit C, page 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.

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, in this case ██████, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

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)*

Here, Appellant has been receiving CLS through the Waiver Agency and, with respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

#### **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



However, a mere change in provider agencies or a rearrangement of services in order to comply with its contract does not justify a reduction of services, even if the Waiver Agency has to increase pay rates for any new provider.

Moreover, while the Waiver Agency now claims that the proposed reduction is appropriate because Appellant's need for hands-on services can be met by █ hours of CLS per day, its argument is immaterial as it was not the basis for its decision in this case and the decision to reduce services was not in accordance with the applicable law or policy. Additionally, even if the Waiver Agency's argument was relevant, it offered no basis for that reduction and the assessment report itself provides that Appellant's needs have not changed, she is totally dependent on others, and she cannot be left alone. The Waiver Agency also appears to recognize that the reduced amount of services would be insufficient as, following the filing of the request for hearing, it proposed that Appellant receive █ hours a day of CLS and an overnight stipend so that someone can stay with Appellant at all times.

Per policy, CLS staff may provide the assistance necessary to preserve the health and safety of the participant so that the participant may reside and be supported in the most integrated and independent community setting. See MPM, January 1, 2014 version MI Choice Waiver Chapter, page 12. Here, the Waiver Agency proposes to reduce Appellant's CLS from █ hours per day to █ hours per day, but its basis for doing so is improper. Moreover, to the extent the proposed reduction was subsequently based on Appellant's actual needs, the undersigned Administrative Law Judge would still find that the Waiver Agency erred given the available information and evidence. Accordingly, the Waiver Agency's decision must be reversed.

To the extent that █ wants to reduce Appellant's services in the future on the basis that the current amount of services is unnecessary and an overnight stipend could replace a significant amount of Appellant's services, that issue is not before the undersigned Administrative Law Judge. The Waiver Agency is free to reassess Appellant and, if appropriate, send out a new and proper advance action notice regarding any proposed reductions. Appellant would then have the opportunity to file a new request for hearing and, if necessary, an administrative hearing would be held.

Similarly, what agency provides Appellant's CLS or what shifts the caregiver(s) work are not before the undersigned Administrative Law Judge and jurisdiction is limited to the action at issue in this case. See the Code of Federal Regulations, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.*; and the MPM, January 1, 2014 version, MI Choice Waiver Chapter, page 34.

With respect to the decision at issue in this case, the Waiver Agency's decision to reduce Appellant's services must be reversed and it must continue to provide █ hours of CLS per day at this time.

[REDACTED]  
Docket No. 2014-32283 EDW  
Decision and Order

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly reduced Appellant's services.

**IT IS THEREFORE ORDERED** that:

The Waiver Agency's decision is **REVERSED**.

*Steven Kibit*

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.