

**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. 2014-32431 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 ██████████. ██████████, the Appellant's mother/guardian, appeared and testified for the Appellant.

██████████, RN, BSN, Clinical Manager, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the ██████████ (AAA ██████). ██████████, 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 a ██████-year-old, (DOB: ██████████), who is enrolled in the MI Choice Waiver Program. (Exhibit A, pp. 2, 3, 6, Exhibit 1 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).
3. On ██████████, ██████████, ██████████, RN Supports Coordinator, and ██████████, LBSW, Social Work Supports Coordinator, met with Appellant in his home along with the Appellant's mother/guardian for a

**Docket No. 2014-32431 EDW**  
**Decision and Order**

reassessment to determine the Appellant's continued eligibility for the MI Choice Waiver program and his 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 his MI Choice Waiver CLS Services should be reduced from 70 hours per week to 55.5 hours per week to more accurately reflect the hands-on care needed by the Appellant. (Exhibit A, pp. 6-20, 33 and testimony).

4. On [REDACTED], Appellant was sent an Advance Action notice advising him that her MI Choice Waiver CLS Services would be reduced from 70 hours per week down to 55.5 hours per week, 12 days from the date of the notice. Appellant was advised of his rights to a Medicaid Fair Hearing. (Exhibit A, pp. 2, 3-530, 31-32 and testimony).
5. On [REDACTED], 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)].

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
- 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.I. COMMUNITY LIVING SUPPORTS**

Community Living Supports (CLS) services facilitate an individual'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, non-medical 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 individual's community living preferences, attendance at medical appointments, and acquiring or procuring goods and services necessary for home and community living.

██████████  
**Docket No. 2014-32431 EDW**  
**Decision and Order**

CLS staff may provide other assistance necessary to preserve the health and safety of the individual so they may reside and be supported in the most integrated 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 may not 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's plan of service. 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. [pp. 12-13].

The Waiver Agency provided evidence that on ██████████, ██████████, RN, Nurse Supports Coordinator, and ██████████, Social Work Supports Coordinator, met with Appellant in his home along with the Appellant's mother/guardian for a reassessment to determine the Appellant's current needs for services in the MI Choice Waiver Program. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) and found the Appellant continued to be eligible for the MI Choice Waiver program under Doors 1 & 2. They determined the Appellant was totally dependent on his caregiver for his person care needs. However, based on the reassessment, the Waiver Agency determined that the Appellant's MI Choice Waiver CLS Services should be reduced from 70 hours per week to 55.5 hours per week to more accurately reflect the hands-on care needed by the Appellant.

██████████, RN, BSN, ██████████'s Clinical manager and Nurse ██████████ stated the reduction in the Appellant's CLS hours from 70 hours per week down to 55.5 hours per week was based on the facts of their ██████████ assessment and the actual hands on care being provided to the Appellant based on the number of hours for each category of care according to the Appellant's mother/caregiver's own statements as to how much time each listed task required. (Exhibit A, pp. 28-30 and Exhibit 1). The total hours of CLS authorized by ██████████ was simply the total number of hours the

██████████  
**Docket No. 2014-32431 EDW**  
**Decision and Order**

Appellant's mother indicated it took to perform the various care tasks in a given week. The Agency's witness established that medical necessity was shown for 55.5 hours of CLS per week.

Appellant's mother testified she feels the Appellant can't be left alone. He has seizures and chokes a lot. He also uses nightly oxygen. Appellant's mother indicated the Appellant was totally dependent on her. She stated the Appellant's medications need to be timely administered or he will have seizures. Appellant also wears diapers that need to be changed periodically. Appellant's mother stated she did not understand why they doubted her care. She said she gives not only the 10 hours care daily but she cares for him 24 hours per day. Appellant's mother said she invited the Agency workers to stay for a whole day to see what care she provides each day for the Appellant. She said she is satisfied with the 70 hours per week she was being paid for, and that the Appellant needs a lot of special care. She provided an outline of the 24 hour care needed for the Appellant along with her request for a hearing. (See Exhibit A, pp 28-29 and Exhibit 1).

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly reduce his 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 CLS services. The Agency conducted a proper reassessment on ██████████ ████████ to determine the actual number of hours needed to properly care for the Appellant's individual needs. The number of hours authorized were based on the Appellant's mother and caregiver's own statements as to the number of hours needed to care for the Appellant each week. The Appellant's mother was given the opportunity at the hearing to prove why additional CLS hours are medically necessary. 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 CLS services from 70 hours per week down to 55.5 hours per week.

**Docket No. 2014-32431 EDW  
Decision and Order**

**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/[REDACTED]

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.