

**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. 2014-33111 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. Appellant's daughter and caregiver appeared as a witness.

██████████, RN, Clinical Manager, appeared and testified on behalf of the Department of Community Health's (Department) Waiver Agency, ██████████ (Waiver Agency or Agency). ██████████, Supports Coordinator, MA/SW appeared as a witness on behalf of the Agency.

ISSUE

Did the Waiver Agency properly deny Appellant's request to increase her personal care service hours from 13 to 20 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 Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. The 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 female, who is a beneficiary of the federal welfare Medicaid Program administered by the State of Michigan. Appellant is a recipient of SSI.

4. On ██████████ Appellant requested an increase in CLS hours from 13 to 20 per week. On ██████████ the Agency conducted a 90 day assessment showing Appellant's primary diagnosis as COPD and emphysema. Appellant "smokes or chews tobacco daily." Appellant complains that she has no appetite; eats at least 3 meals per day. (Exhibit A)
5. Appellant's daughter is her caregiver who lives with Appellant. The caregiver "...reports she now has social security disability payments but she could still work...and reports she can do what is needed for her mom...." (Exhibit A)
6. The Agency submitted 14 pages of the WISP Participant Assessment Report along with the Care Plan Worksheet documenting that Appellant continues to need 13 hours per week or 59 hours per month as assessed under federal and state law, and Department policies. (Exhibit A & A. 15)
7. On ██████████ the Agency notified Appellant that it will continue Appellant's hours as she was previously receiving but denied her request to increase her hours. (Exhibit A.16).
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. At the hearing, Appellant argued that it was unfair that the Medicaid program does not pay for a portion of her daughter's housekeeping needs. (Testimony)

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, in this case the Region 2 AAA, 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*, July 1, 2012, 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.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.

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.

Medicaid Provider Manual
MI Choice Wavier Section
January 1,2013; pp 9-10

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.*:

§440.230 Sufficiency of amount, duration, and scope.

(a) The plan must specify the amount, duration, and scope of each service that it provides for—

- (1) The categorically needy; and
- (2) Each covered group of medically needy.

(b) Each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.

(c) The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service under §§440.210 and 440.220 to an otherwise eligible beneficiary solely because of the diagnosis, type of illness, or condition.

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

[46 FR 47993, Sept. 30, 1981]

In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

In this case, the Agency submitted a very extensive and thorough documentation assessing Appellant's needs. The WISP Participant Assessment Report extensively documents Appellants 59 hours per month in care, by her disabled daughter. (See Exhibit A). Moreover, the Care Plan Worksheet is part of a quantified formula that automatically calculates hours based on the assessment. This reassessment verifies the need for the 13 hours per week, or 59 per month. (Exhibit A)

The Agency explained that some housekeeping must be prorated to other individuals in the home, Appellant's daughter, as the law and policy does not allow payments to be made for the care of others housekeeping. Appellant argues that this is unfair. As noted above, this program is funded with Medicaid monies and is considered a welfare program. Under 42CFR 440.230(d), as well as the medical necessity criteria cited above, federal mandates require this program to only pay for activities that are medically necessary. Appellant's daughters housekeeping needs are not medically necessary and not subject to be reimbursed for payment.

As to Appellant's remaining concerns, Appellant submitted no evidence to rebut the Department's credible and substantial evidence herein. This ALJ finds that the denial is supported by a preponderance of evidence and thus, the denial is 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 denied Appellant's request to have her hours raised from 13 to 20 per week.

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

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.