

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Docket No. 2014-34105 EDW
Case No. ██████████

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 ██████████. Appellant appeared and testified on her own behalf.

██████████, Manager, appeared on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████"). ██████████, LLMSW, Social Work Supports Coordinator 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 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).
3. On ██████████, ██████████, ██████████, LLMSW, Social Work Supports Coordinator met with Appellant in her home and completed a 90-day reassessment to determine the Appellant's current needs for services in

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the MI Choice Waiver Program. She completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). ██████████ found the Appellant continued to eligible for the MI Choice Waiver program under Door 1, but determined that her MI Choice Waiver Services should be reduced from 42 hours per week to 28 hours per week to more accurately reflect the hands-on care needed by the Appellant. It was determined that the decrease would occur in two phases. For the first phase, Appellant was sent an Advance Action Notice on ██████████ decreasing her services to 5 hours per day, 7 days per week (2.5 hours per day of personal care and 2.5 hours per day of homemaking), effective ██████████. (Exhibit A, pp. 2, 5-30, 40 and testimony).

4. On ██████████, Appellant was sent another Advance Action notice advising her that her MI Choice Waiver Services would be reduced by to 4 hours per day, 7 days per week (2 hours per day of personal care and 2 hours per day of homemaking), effective ██████████. Appellant was advised of her rights to a Medicaid Fair Hearing. (Exhibit A, pp. 2, 33, 39).
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 in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, October 1, 2013, 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).

* * *

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).

The Waiver Agency provided evidence that on ██████████, ██████████, LLMSW, Social Work Supports Coordinator met with Appellant in her home and completed a 90-day 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). ██████████ found the Appellant continued to eligible for the MI Choice Waiver program under Door 1, but determined that her MI Choice Waiver Services should be reduced from 42 hours per week to 28 hours per week to more accurately reflect the hands-on care needed by the Appellant. Appellant was supposed to be receiving CLS 6 hours per day 7 days on a temporary basis following her stroke and had previously received CLS only 4 hours per day 7 days per week.

██████████ stated it was determined that the decrease would occur in two phases. For the first phase, Appellant was sent an Advance Action Notice on ██████████ decreasing her services to 5 hours per day, 7 days per week (2.5 hours per day of personal care and 2.5 hours per day of homemaking) effective ██████████. On ██████████, Appellant was sent another Advance Action notice advising her that her MI Choice Waiver Services would be reduced by to 4 hours per day, 7 days per week (2 hours per day of personal care and 2 hours per day of homemaking), effective March 12, 2014.

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██████████ stated they discussed the care needs of the Appellant and determined that she has two paid caregivers through self-determination. One provides Community Living Supports (CLS services including homemaking and personal care) 2 hours per day 2 days per week. The other provides CLS 4 hours 5 days per week and 2 hours 2 days per week. In addition, Appellant receives informal support from a family friend, Chris, who assists her with getting into bed and with some meal preparation. Appellant also receives help from a home help aide with ██████████ (DMC) 2 hours per day, 3 days per week, and a social worker, a nurse and a chaplain are also available through the DMC.

██████████ stated after the ██████████ notice went out, they scheduled a person centered planning meeting with the Appellant to discuss her care needs. Appellant indicated the reduction to 4 hours per day did not allow for having her home vacuumed and mopped as often as she liked, i.e., 3 to 4 days per week. ██████████ stated the Appellant was informed she needed to more fully utilize the services of the home help aide from DMC and the aide agreed to do more of the homemaking chores and assist her with bathing once a week to free up more time for the CLS workers to perform other activities. She was also advised that the MI Choice program could not replace the informal supports she was receiving from her family friend and her church. ██████████ concluded that considering the Appellant's care needs, and her available formal and informal supports, the Appellant was receiving adequate Medicaid covered services to meet her current need at the authorized level of 4 hours per day, 7 days per week.

Appellant testified since her stroke in ██████████ she has needed help dressing herself. She said she needs help every morning from the worker on duty. She gets help showering only two days per week. She also said since she has been without her motorized wheelchair, she has needed help preparing her meals. Appellant said the 4 hours per day are not adequate, she tried to get by on the 5 hours per day, but the 4 hours per day are not enough to keep thing up that she needs for herself. Appellant said her church brings her food packets, but does not help with her care. Appellant stated she pays out of pocket for someone to help her get into bed and to take her places.

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. Considering the additional assistance the Appellant is receiving from informal supports and other services available in the community through the DMC, the CLS hours authorized by the Waiver Agency are sufficient to meet the Appellant's current needs for homemaking and personal care.

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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.

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.