

**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:**

**Docket No.** 2014-34822 EDW

██████████,

██████████

██████████

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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, Appellant's daughter and care provider, appeared and testified on Appellant's behalf. ██████████, Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████). ██████████, Supports Coordinator, also testified as a witness for the Waiver Agency.

**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 hypertension; peripheral vascular disease; arthritis; and a history of carpal tunnel syndrome. (Respondent's Exhibit C, pages 1, 8).
3. Appellant has been receiving services through the Waiver Agency, including ██████████ hours of personal care services and ██████████ hours of homemaker services per week. (Respondent's Exhibit C, page 14).
4. On ██████████, ██████████ performed a Level of Care Determination (LOCD) and assessment in Appellant's home with Appellant and his daughter/care provider. (Respondent's Exhibit C, pages 1-15; Respondent's Exhibit D, pages 1-6).

5. During that assessment, Sanford and Appellant's daughter/care provider discussed the assistance the daughter provides for Appellant and how long it takes her to provide such assistance. (Respondent's Exhibit A, pages 11-13; Testimony of Appellant's representative; Testimony of ██████████)
6. Based on the reports of Appellant's daughter/care provider, ██████████ drafted a Daily Worksheet listing the tasks provided, the time to complete the tasks, the number of days per week the assistance is provided, and the total amount of assistance provided per week. (Respondent's Exhibit E, page 1).
7. In total, as reflected in that worksheet and Appellant's daughter/care provider's testimony during the hearing, she provides ██████████ hours of care per week. (Respondent's Exhibit E, page 1; Testimony of Appellant's representative).
8. On ██████████, the Waiver Agency sent Appellant written notice that his services would be reduced, effective ██████████. (Respondent's Exhibit A, pages 1-2).
9. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Petitioner's Exhibit 1, page 1).
10. In that request, Appellant asserts that the reduction in income will cripple his household as his daughter uses the money to pay for non-covered supplies and utilities. (Petitioner's Exhibit 1, 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 personal care and homemaker services through the Waiver Agency and, with respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

#### **4.1.B. HOME MAKER**

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance) provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator.

#### **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.

*MPM, April 1, 2014 version  
MI Choice Waiver Chapter, pages 9-10*

However, while personal care and homemaker services are Medicaid covered services, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Here, it is undisputed that the Appellant has a need for some services and he has been continually been authorized for personal care and homemaker services. Instead, the sole dispute is the amount of such services to be authorized, with the Waiver Agency planning to reduce Appellant's services from █████ hours per week to █████ hours per week.

According to Respondent's witness █████, she and Appellant's daughter/care provider discussed the assistance the daughter provides for Appellant and how long it takes her to provide such assistance during the assessment. Sanford also testified that, based on the reports of Appellant's daughter/care provider, she drafted a Daily Worksheet listing the tasks provided, the time to complete the tasks, the number of days per week the assistance is provided, and the total amount of assistance provided per week. In total, that worksheet identified a need for █████ hours of care per week and the Waiver Agency therefore decided to reduce Appellant's services to that amount.

In response, Appellant's representative testified that Appellant is on a fixed income and she supplements it with the payments she receives for providing waiver services. She also testified that, while the Daily Worksheet drafted by █████ accurately reflects the times and tasks Appellant's representative reported during the assessment, she assists Appellant with other tasks and with the tasks she did identify more often than she reported.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce his services. Moreover, this Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information it had at the time it made that decision.

Here, given the available information, Appellant failed to meet his burden of proof and the Waiver Agency's decision must be affirmed. The Waiver Agency's witness credibly testified as to how she calculated the number of hours that are medically necessary based on the specific reports of Appellant's care provider regarding the tasks she assists with and how long that assistance takes.

Appellant's representative now generally testifies that she provides more assistance with Appellant than what she reported, but she failed to provide specific examples of such assistance and she also acknowledged that ██████████ testimony and the Daily Worksheet accurately reflects what she reported. The Waiver Agency is justified in relying upon what is reported during the assessment and, given the reports in this case, it authorized all of the assistance that was identified.

Moreover, while both the request for hearing and Appellant's representative's testimony during the hearing itself assert that the money Appellant's representative receives from the Waiver Agency is used for necessary household expenses, those assertions are immaterial to this action and Appellant's specific services, and the payments for such assistance, are based on medical necessity and not financial need.

Based on the undisputed reports of what assistance was necessary, the Waiver Agency properly decided to reduce Appellant's services in this case from ██████ hours per week to ██████ hours per week.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

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

*Steven Kibit*

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

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]  
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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.