

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS 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. 2014-34878 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 did not appear. Appellant was represented by ██████████.

██████████, ██████████, and ██████████ ██████████, Supports Coordinator, represented the Department's MI Choice Waiver Agency, The ██████████, (Waiver Agency or Agency).

ISSUE

Did the MI Choice Waiver agency properly reduce Appellant's homemaker hours?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████████ year old Medicaid beneficiary, who is a recipient of MA-G2S, born ██████████.
2. Appellant's primary diagnosis is stroke/CVA. appointments. (Exhibit A.8) Appellant lives at the ██████████ with his spouse. Breakfast and dinner is part of rental agreement; has a hooyer lift. (Exhibit A.5)
3. Appellant has 2 sons who live nearby.
4. On ██████████, the Waiver Agency conducted a reassessment of Appellant's needs. The Agency assessment concluded that Appellant's needs "more accurately" are reflected in a reduction from 48 to 43 hours per week. The

Agency adjusted the housekeeping hours due to a “more accurate” reflection of the services provided in the rental agreement but did not change any hands on personal care hours assigned to Appellant. (Exhibit E, Testimony)

5. On ██████████, the Agency mailed Appellant an Advance Action Notice notifying him that her care hours were being reduced from 48 to 43 hours per week. (Exhibit A, Testimony).
6. The Appellant’s request for hearing was received by the Michigan Administrative Hearing System on ██████████.

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 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 Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards include personal care services and homemaker services.

The MI Choice Waiver defines Homemaker services as follows:

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.

The MI Choice Waiver defines Personal Care services as follows:

"...assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan

of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . .”

Michigan Medicaid Provider Manual
MI Choice Waiver Section
October 1, 2012, Pages 9-11

In this case, the Waiver Agency continued Appellant's hours for hands on services, but reduced the “homemaking” hours, to, as stated by the Agency, “more accurately” reflect the rental arrangement Appellant has in his assisted living apartment. Appellant's representative argues that nothing has changed, and that in fact, if anything, Appellant's condition has worsened. In addition, Appellant's representative argues that the homemaking and personal care needs, specifically, bathing from toileting accidents, are inter-related.

Evidence indicates that Appellant went from 9 hours per week for homemaking to approximately 4. The rental agreement takes trash out once per week. Appellant's representative argued that once per week is insufficient and not sanitary. However, a review of Exhibit E submitted by the Agency contains assessment values for the different tasks, days per week, and weekly totals. This Exhibit indicates that the Agency allocated daily trash removal. The Waiver Agency also testified that it is entitled to make a reassessment anew, based on the observations and information available to the SW at the time of the assessment. In response to Appellant's representative's argument that some personal care and homemaking activities cannot be entirely separated from one another, the Agency argued that the MI Choice Waive is a Medicaid or welfare program, and is not intended to accommodate all of the needs of the beneficiaries. Rather, it is a payor or last resort, in place as an “adjunct to family” pursuant to the law and policy found in Exhibits F & G; it is a supplemental program/payor.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. Appellant has the burden of proof to show eligibility for the requested services.

This ALJ finds that the Waiver Agency properly reduced Appellant's homemaking care hours. Federal law, state law, policy, and the last payor philosophy of this program gives the Agency some latitude and discretion in making determinations based on the totality of services available to the welfare beneficiaries. After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole. Appellant's arguments did not meet the burden of proof beyond the allotment and considerations of the Waiver Agency.

For these reasons and for the reasons stated above, this ALJ finds that the Agency properly reduced Appellant's hours. The action is upheld.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds that the MI Choice Waiver Agency properly reduced Appellant's hours.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is AFFIRMED.

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]

Docket No. 2014-34878 EDW
Hearing Decision & Order

***** 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.