

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. 2014-35499 EDW

██████████ ██████████

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 appeared and testified on her own behalf. ██████████, Director of Community Support Services, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or ██████████). ██████████ Supports Coordinator, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly 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 chronic obstructive pulmonary disease; hypertension; arthritis; osteoporosis; and anxiety. (Respondent's Exhibit C, pages 1, 7-8).
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. Appellant chose to utilize those services in ██████████ hours a day, ██████████ days a week, rather than have a provider come every day. (Testimony of ██████████).

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5. On ██████████ ██████████ performed a routine Level of Care Determination (LOCD) and reassessment in Appellant's home with Appellant. (Respondent's Exhibit C, pages 1-15; Respondent's Exhibit D, pages 1-6).
6. During that assessment, Appellant reported and ██████████ documented that there were no problems or changes with respect to Appellant's social functioning; cognitive skills; communication/hearing; mood and behavior patterns; nutritional issues; vision; or skin. (Respondent's Exhibit C, pages 4-11).
7. Appellant did report a need for limited assistance with dressing; extensive assistance with housework; and assistance with setting up bathing. (Respondent's Exhibit C, pages 11-13).
8. In particular, Appellant needed assistance with putting on her pants occasionally; completing her laundry, as Appellant cannot go down into the basement where the washer and dryer are; cleaning around the house; and getting in-and-out of the shower. (Respondent's Exhibit C, pages 11-13; Testimony of Appellant).
9. Appellant also reported that, while her provider often prepares breakfast for Appellant while Appellant is showering, Appellant is able to prepare her own meals, including quick meals on a grill and bigger meals, which will last ██████████ to ██████████ days, prepared on the stove. (Respondent's Exhibit C, page 13).
10. After reviewing the reassessment, the Waiver Agency determined that Appellant's services could be reduced to ██████████ hours per week. (Respondent's Exhibit B, page 3; Testimony of ██████████; Testimony of ██████████).
11. ██████████ then telephoned Appellant, who indicated that she agreed with the reduction. (Respondent's Exhibit B, page 3; Testimony of Appellant; Testimony of ██████████).
12. Appellant also stated that she wished to continue utilizing her hours ██████████ days a week, albeit now in ██████████ hour blocks on those days. (Respondent's Exhibit B, page 3; Testimony of ██████████).
13. Subsequently, while also indicating that she was worried that her health might regress with fewer services, Appellant signed a form stating that she understood and agreed with the reduction in her services. (Respondent's Exhibit A, pages 1-2).

14. On or about ██████████, however, Appellant informed ██████████ that Appellant now disagreed with reduction as her care provider has been unable to meet all of Appellant's needs in the time allotted. (Respondent's Exhibit B, page 2).
15. The Waiver Agency then sent Appellant written notice of the reduction and Appellant's right to appeal that reduction. (Respondent's Exhibit B, pages 1-2; Testimony of ██████████).
16. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (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.

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 she 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 having reduced Appellant's services from █████ hours per week to █████ hours per week and Appellant arguing that her services should remain the same.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce her 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 her burden of proof and the Waiver Agency's decision must be affirmed. Appellant herself acknowledges the improvement she has shown and even she initially agreed with the reduction in services. Moreover, while Appellant now challenges the Waiver Agency's decision, she still only identified a limited need for assistance and, on most days, Appellant does not need any assistance at all as she chooses to have her provider only come █████ days a week.

Appellant also failed to explain why her care provider cannot meet her limited needs in █████ hours per week. Instead, the main area of dispute appears to be with respect to meal preparation where Appellant now testifies that her grill has broken, she cannot safely use her stove, and that she relies solely on microwavable meals or meals prepared by her provider. However, during the reassessment, Appellant reported and █████ documented that, while her provider often prepares breakfast for Appellant during the time Appellant is showering, Appellant is able to prepare her own meals, including quick meals on a grill and bigger meals, which will last █████ to █████ days, prepared on the stove. Appellant's testimony during the hearing contradicts what she reported to █████ and the Waiver Agency was justified in relying upon what is reported and only authorizing the very limited assistance with eating that was identified as being needed.

Accordingly, Appellant has failed to meet her burden of proving by a preponderance of the evidence that, given the information available at the time, the Waiver Agency erred in reducing her sources and the Waiver Agency's decision must be affirmed.

[REDACTED]
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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 Waiver Agency properly reduced Appellant's services.

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.