

**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. 2014-35545 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 Appellant's request for a hearing.

After due notice, a hearing was held on June ██████████. Appellant appeared and testified on her own behalf. ██████████, caregiver, appeared as a witness for Appellant.

██████████, RN, Clinical Manager, appeared and testified on behalf of the Department's Waiver Agency, ██████████ (██████████ or Waiver Agency). ██████████, Social Worker, Supports Coordinator and ██████████, RN, Supports Coordinator, appeared as witnesses for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS) hours from 28 to 24 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 ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. ██████████ 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 Medicaid beneficiary, born ██████████. Appellant's diagnoses include spina bifida, hypertension, paraplegia, and depression. Appellant has had multiple back surgeries with steel rods

placed in her spine, a urostomy, colostomy, ureterostomy and removal of her left kidney. Appellant has no feeling from her chest down. (Exhibit A, p 10, 16-17; Testimony)

4. Appellant lives alone in a handicap accessible HUD apartment. Appellant has a black Labrador dog for service therapy. Appellant's informal supports consist of her father, who lives in the same apartment complex and has dinner with her nightly, as well as her self-determination worker. (Exhibit A, pp 12-13; Testimony)
5. A home visit for a reassessment was completed on ██████████. (Exhibit A, pp 10-23; Testimony)
6. Following the reassessment, a new Care Plan Worksheet was prepared, which demonstrated that Appellant only meet the medical necessity criteria for 24 CLS hours per week. (Exhibit A, pp 3-5).
7. On ██████████, ██████████ notified Appellant that it had determined that her CLS hours would be reduced from 28 to 24 hours per week. (Exhibit A, p 6; Testimony).
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. (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 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 Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, 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.I. COMMUNITY LIVING SUPPORTS**

Community Living Supports (CLS) services facilitate a participant's independence and promote reasonable participation in the community.

Services can be provided in the participant's residence or in a community setting to meet support and service needs.

CLS may include assisting, reminding, cueing, observing, guiding, or training with meal preparation, laundry, household care and maintenance, shopping for food and other necessities, and activities of daily living such as bathing, eating, dressing, or personal hygiene. It may provide assistance with such activities as money management, nonmedical care (not requiring nurse or physician intervention), social participation, relationship maintenance and building community connections to reduce personal isolation, non-medical transportation from the participant's residence to community activities, participation in regular community activities incidental to meeting the participant's community living preferences, attendance at medical appointments, and acquiring or procuring goods and services necessary for home and community living.

CLS staff may provide other assistance necessary to preserve the health and safety of the participant so they may reside and be supported in the most integrated and independent community setting.

CLS services cannot be authorized in circumstances where there would be a duplication of services available elsewhere or under the State Plan. CLS services cannot be authorized in lieu of, as a duplication of, or as a supplement to similar authorized waiver services. The distinction must be apparent by unique hours and units in the individual plan of services. Tasks that address personal care needs differ in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care service in the State Plan. The differences between the waiver coverage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

When transportation incidental to the provision of CLS is included, it must not also be authorized as a separate waiver service. Transportation to medical appointments is covered by Medicaid through the State Plan. Community Living Supports do not include the cost associated with room and board.

*Medicaid Provider Manual*  
*MI Choice Waiver Section*  
*April 1, 2014, pp 12-13*

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. In order to assess what MI

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Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

Appellant bears the burden of proving, by a preponderance of evidence, that 28 hours per week of CLS hours are medically necessary.

The Waiver Agency witness testified that a home visit for a reassessment was completed on [REDACTED] and that, following the reassessment, a new Care Plan Worksheet was prepared, which demonstrated that Appellant only meet the medical necessity criteria for 24 CLS hours per week. The Waiver Agency witness indicated that on [REDACTED], [REDACTED] notified Appellant that it had determined that her CLS hours would be reduced from 28 to 24 hours per week.

Appellant testified that she is seriously disabled and due to numerous surgeries throughout her life, her body has many scars and dips, and it is difficult to get colostomy and ureterostomy bags to stick to her body. Appellant indicated that when the bags inevitably fall off, her caregiver has to return to reattach them. Appellant admitted that her father does live in the same apartment complex and can provide some support, but that he is in the beginning stages of Alzheimer's disease and he requires detailed instructions each time to reattach the bags. Appellant also indicated that when her father does reattach the bags, they do not stick for very long. Appellant testified that the problem has been exacerbated because the company that made the bags that worked best for her went out of business and she is now forced to get the bags from a different company and the new bags do not work as well.

Appellant's caregiver testified that this is not an issue of money and that she already works with Appellant more than what she gets paid for. Appellant's caregiver indicated that she has been experimenting with the new bags for a few months now and is starting to get them to stick better, but that they are not as good as the old bags. Appellant's caregiver testified that it would be nice to be paid for some of the extra hours that she works.

In response, the Waiver Agency witness pointed out that Appellant's father is also part of the Waiver program and uses the same caregiver, so that Appellant could use some of his hours when he is having a good day and Appellant is having a bad day. The Waiver Agency witness also pointed out that Appellant did not inform her about her father's worsening condition or the change in the company that supplies the bags during the assessment. Even so, the Waiver Agency witness testified that 24 hours per week of CLS should be sufficient to meet Appellant's needs provided proper time management is utilized.

This ALJ finds that the Waiver Agency properly reduced Appellant's CLS hours from 28 to 24 per week. Appellant failed to prove, by a preponderance of the evidence, that 24 CLS hours per week were medically necessary. Appellant did not take issue with any of the scoring in the Care Plan Worksheet, but rather testified that 24 hours was simply insufficient. The Waiver Agency's Care Plan Worksheet takes into account a

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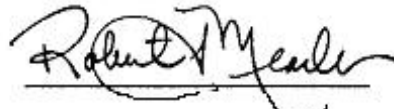
participant's needs and properly allocates CLS hours based on those needs. Given that Appellant could point to no issue with the scoring in the Care Plan Worksheet, it cannot be said that the hours allocated are insufficient. Furthermore, the Waiver Agency can only base its decision on the information it had when the decision was made. Here, it appears that Appellant did not make the Waiver Agency aware of some of the issues affecting her care at the time of the assessment. Based on the information the Waiver Agency did have, its decision was proper. If Appellant's situation has significantly changed since the [REDACTED] assessment, she can request a new assessment.

**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 Appellant's CLS hours from 28 to 24 hours per week.

**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**.



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

cc:

[REDACTED]

RJM [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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**\*\*\* 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.