

**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. 2014-35584 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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ Appellant's mother appeared and testified on the Appellant's behalf. Appellant also testified on his own behalf

██████████, R.N., Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ██████████ ("Waiver Agency" or ██████████). ██████████, R.N., Appellant's Nurse 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. Appellant had been receiving ██████ hours per week in Community Living Supports through the Waiver Agency, and by the participant's request was receiving his services through ██████████. (Exhibit A, pp. 2, 8, 28-29, 31, 32-36 and testimony).

Docket No. 2014-35584 EDW
Decision and Order

2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A, pp. 38-43 and testimony).
3. On [REDACTED], R.N., Appellant's Nurse Supports Coordinator and Social Work Supports Coordinator [REDACTED], LBSW, met with Appellant and conducted a [REDACTED]-day reassessment to determine the Appellant's current needs for services in the MI Choice Waiver Program. The Waiver Agents found the Appellant continued to eligible for the MI Choice Waiver program. Appellant requested an increase in service hours, but after reviewing Appellant's needs, the services currently being provided by [REDACTED] staffing, and completing a Care Plan Worksheet, they determined that his MI Choice Waiver Services should be reduced from [REDACTED] hours per week to [REDACTED] hours per week to more accurately reflect the hands-on care needed by the Appellant. (Exhibit A, pp. 5-7, 9-27, 31 and testimony).
4. On [REDACTED], a notice was sent to the Appellant indicating his MI Choice Waiver Services would be reduced from [REDACTED] hours per week to [REDACTED] hours per week effective [REDACTED] to more accurately reflect the hands-on care needed by the Appellant. The notice indicated Appellant's care plan did not merit the additional hours at this time. (Exhibit A, p. 4 and testimony).
5. On [REDACTED], 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

Docket No. 2014-35584 EDW
Decision and Order

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)].

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, 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).

Docket No. 2014-35584 EDW
Decision and Order

- 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].

* * *

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

Docket No. 2014-35584 EDW
Decision and Order

- Non-emergency transfers of Medicaid-eligible participants from their current MI Choice waiver agency to another MI Choice waiver agency
- 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].

* * *

SECTION 4 – SERVICES

The array of services provided by the MI Choice program is subject to the prior approval of CMS. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

- indicated by the current assessment;
- detailed in the plan of service; and
- provided in accordance with the provisions of the approved waiver. [p. 9].

* * *

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.B. HOMEMAKER

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. (p. 9).

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. [p. 10].

* * *

4.1.I. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) services facilitate an individual'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, non-medical 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 individual'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 individual so they may reside and be supported in the most integrated 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 may not 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's plan of service. 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.

Docket No. 2014-35584 EDW
Decision and Order

Community Living Supports do not include the cost associated with room and board. [pp. 12-13].

The Waiver Agency provided evidence that on [REDACTED], R.N., Appellant's Nurse Supports Coordinator and Social Work Supports Coordinator [REDACTED], LBSW, met with Appellant and conducted a [REDACTED]-day reassessment to determine the Appellant's current needs for services in the MI Choice Waiver Program. The Waiver Agents found the Appellant continued to eligible for the MI Choice Waiver program. Appellant requested an increase in service hours, but after reviewing Appellant's needs, the services currently being provided by [REDACTED] staffing, and completing a Care Plan Worksheet, they determined that his MI Choice Waiver Services should be reduced from [REDACTED] hours per week to [REDACTED] hours per week because his care plan did not justify the additional hours.

[REDACTED], the Waiver Agency's Clinical Manager established that the Appellant's Supports Coordinators went to the Appellants residence on [REDACTED] and did a physical assessment for his MI Choice Waiver services. [REDACTED] stated the Waiver Agents utilized a Care Plan Worksheet a tool adapted from the DHS Home Help Program which reduced the number of care hours down to [REDACTED] hours per week. [REDACTED] stated the Supports Coordinators then gave the Appellant an Advance Action notice to reduce the CLS hours from [REDACTED] down to [REDACTED] hours per week and provided him with the paperwork to request an appeal.

[REDACTED] established that [REDACTED] was staffing the Appellant's case [REDACTED] days [REDACTED] week and [REDACTED] days the next week alternating [REDACTED] to [REDACTED] hours per shift. She said a neighbor was providing some informal supports. [REDACTED] stated the Appellant occasionally drives short distances. It was also reported the Appellant lives in an apartment and is requesting that all rooms in the apartment be cleaned during each visit, and that [REDACTED] workers reported that there is not enough for them to do during the hours currently authorized for the Appellant's care. [REDACTED] stated that taking into consideration the Care Plan Worksheet, Appellant's case warranted the reduction to [REDACTED] hours per week.

[REDACTED] established that they met with the Appellant on [REDACTED] to do the assessment. [REDACTED] stated Appellant lives in a small [REDACTED] bedroom apartment. [REDACTED] stated they asked the Appellant during the assessment questions concerning meal preparation, cleaning, housework, if he does his laundry, medication management, and shopping. He was also asked about how he transfers and moves about in his apartment, and whether he needed help dressing, eating, toileting, personal hygiene, and bathing. [REDACTED] stated from the Appellant's responses they determined the information needed to complete the Care Plan Worksheet. [REDACTED] stated the worksheet then calculates the number of hours that would be needed to complete the care tasks identified by their assessment.

██████████
Docket No. 2014-35584 EDW
Decision and Order

██████████ stated they asked the Appellant about his physical functioning, what he can and cannot do. Appellant said for meal preparation he could perform the task less than ██████ of the time, and ██████████ determined he needed maximum assistance for this task. For housework, she determined he needed maximum assistance. Appellant advised he handled his own finances. ██████████ stated he needed some supervision with his medications, that he got reminders from his care aide and from his friend/neighbor. She determined he needed maximum assistance with stairs, and help with shopping due to a need for transportation which is not included in Waiver services. Nurse Withers said Appellant was not supposed to drive, but he does drive sometimes. Appellant advised he was able to get out of bed on his own and when he experiences elevated pain he needs limited assistance with transfers. ██████████ determined the Appellant was independent in toileting, with personal hygiene, except he needed limited assistance with bathing and washing his body. Appellant also indicated he was independent in walking in the apartment, but uses a cane sometimes. ██████████ stated there was no change in his physical condition from their previous assessment.

██████████ acknowledged receiving the medical information from the Appellant. (See Appellant's Exhibit 2). ██████████ stated she understood that the Appellant's condition will not improve and that overtime he will need additional assistance. Nurse Warner stated the additional information submitted by the Appellant for the hearing warrants him being in the MI Choice program, because of his multiple health problems.

Appellant's mother testified she disagreed with the Agency's report, but she acknowledged that she was not present for the Appellant's assessment on ██████████. Appellant's mother said Appellant's friend, who was identified as providing some informal supports, is no longer able to do so as his heart ailment had worsened in the last couple of weeks. She indicated that the aides are not asked to clean each room at every visit, and she acknowledged that the apartment is small and does not need cleaning every day.

Appellant's mother said Appellant has asked for assistance with cooking, and due to his neuropathy in his hand he cannot cook for himself. Appellant's mother referenced the medical documentation submitted for the hearing from the Appellant's doctors. (See Exhibit 2). She stated the Appellant needs help with cooking every day. Appellant's mother said it would not work if the aides only came ██████ hours per day, with an additional ██████ hours as needed per week. She said some days Appellant has as many as ██████ doctor's appointments, so the proposed ██████ hours per day would not work. Appellant's mother said that Appellant has had a tremendous decline in health since the ██████ assessment. She said the Waiver Agency did not have the Appellant's current medical information that is contained in Appellant's Exhibit 2. Appellant's mother said his balance is not good and he can't walk outside without assistance.

Appellant testified he agreed with his mother's testimony. He disagreed with the statement that there was not enough work for the aides to do. Appellant complained that an ██████████ worker was asked to cook for him and she made excuses to leave early

Docket No. 2014-35584 EDW
Decision and Order

so she would not have to cook his meals. He also complained that the worker folded up his laundry when it was still wet and put it in his dresser. Appellant stated he needs assistance with walking. He said sometimes he falls down. Appellant said he can walk inside his apartment, but needs assistance when walking outside.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly reduce his 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 based on the information they obtained at the [REDACTED] assessment. Considering the Appellant's actual need for services as demonstrated by the [REDACTED] assessment, the [REDACTED] hours of hours authorized by the Waiver Agency was sufficient to meet the Appellant's needs for personal care at that time. [REDACTED] did advise that a reassessment was in order based on the new and additional medical documentation submitted by the Appellant for the hearing. [REDACTED] advised that the Appellant and his mother, or anyone else could be present for the reassessment.

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/db

cc: [REDACTED]

Docket No. 2014-35584 EDW
Decision and 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.