

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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**IN THE MATTER OF:**

██████████,

Appellant

**Docket No.** 2014-35630 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.* and upon a request for a hearing filed on behalf of the Appellant/Petitioner.

After due notice, a hearing was held on ██████████. The Appellant appeared and offered testimony on his own behalf. ██████████, Director of Long-Term Care, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "AAA"). ██████████, Case Manager, also testified as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency reduce Appellant's personal care services purchased by the MI Choice waiver program?

**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 male who has been diagnosed with quadriplegia and obsessive-compulsive disorder. (Exhibit A, Item 2, p. 2; Testimony)
2. On ██████████, a regularly scheduled assessment took place. During the assessment, the AAA Supports Coordinator identified the Appellant was receiving Medicare reimbursed Skilled Nursing Services from AAA and Hospice on a weekly basis. (Exhibit A, Item 1; Exhibit A, Item 2; Testimony)
3. On ██████████, the AAA Supports Coordinator contacted the Skilled Home Health Agency and verified a Home Health Aid could be placed into the Appellant's home in conjunction with the Skilled Nursing Service at one hour a day two times a week. (Exhibit A, Item 8, p. 2; Testimony)

4. On ██████████, the AAA Supports Coordinator contacted the Appellant. The AAA Supports Coordinator told the Appellant he was eligible to receive services of a Home Health Aid as part of his skilled nursing benefit and thus his service plan would be reduced by 2 hours a week. (Testimony)
5. On ██████████, the AAA sent the Appellant an Adequate Action Notice. The notice indicated the Appellant's hours of service were being reduced by 2 hours per week. (Exhibit A, Item 5; Testimony)
6. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by the Appellant.

### **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 AAA, 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 generally 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)*

Among the specific services approved in this case are Community Living Supports (CLS). With respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

#### **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.

*MPM, October 1, 2013 version  
MI Choice Waiver Chapter, pages 12-13*

However, while CLS are Medicaid-covered services, Medicaid beneficiaries are still only entitled to medically necessary covered services for which they are eligible and services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 CFR 440.230.

In support of its position, the AAA primarily relies on the Minimum Operating Standards for MI Choice Waiver Program Services and, as provided in the MPM, such standards do apply in this case:

#### **4.5 OPERATING STANDARDS**

MDCH maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service requirements. Billing codes and units are also defined in the document.

*MPM, October 1, 2013 version  
MI Choice Waiver Chapter, page 17*

Specifically, the Waiver Agency relies on portions of Attachment I of the Minimum Operating Standards:

#### **IV. SUPPORTS COORDINATION**

SC is the method that facilitates access to and arrangement of services and other forms of support needed and wanted by MI Choice participants. SCs work with participants to determine how and who will meet the participant's LTC needs. SCs assist participants in arranging for services and supports and monitor the quality of services received. SC includes valuing the cultural backgrounds of participants in the decision making process.

##### **A. DEFINITION**

SC is a service designed to inform, assist, and coordinate a variety of home and other community-based services needed by elderly and other adults with disabilities aged 18

years and older who meet the NFLOC. SCs utilize all available services and supports before authorizing MI Choice services while assisting the participant in planning interventions. SCs work in partnership with participants to determine the interventions that will promote the participant's goals and facilitate the achievement of desired outcomes while addressing the participant's service and support needs.

SCs build participant choices and preferences into the SC process to assure a person focused, self-determination approach to the receipt of services and supports. SCs arrange formal services based upon participant choice and approval. The participant and their SCs explore other funding options and intervention opportunities when personal goals expand beyond meeting basic needs.

## **B. SUPPORTS COORDINATION SERVICE FUNCTIONS**

SCs provide all of the following functions:

### **1. Assessment**

The iHC Assessment System, consisting of the iHC and CAPs, is the basis for the MI Choice Assessment. SCs perform a comprehensive evaluation including assessment of the individual's: unique preferences; physical, social, and emotional functioning; medication; physical environment; natural supports; and financial status. The SC must fully engage the participant in the interview to the extent of the participant's abilities and tolerance.

Specific iHC items identify applicants who could benefit from further evaluation of particular problems and risks for functional decline. These items, called "triggers," link the iHC to a series of problem oriented CAPs. The CAPs are procedures that guide the SCs through further assessment and individualized service and support planning with participants.

### **2. Plan of Service Development**

SCs and participants plan interventions from both allies and community resources that will meet each participant's identified needs. A written plan of service documents the

issues, concerns, conditions, and specific supports and interventions needed. The SC and participant base the plan of service upon participant preferences and needs identified during a PCP assessment process.

\* \* \*

#### **D. INVOLVEMENT OF ALLIES**

SCs work with participants to engage a team of family, friends, professionals, supports brokers, caregiver staff, and other allies to assist in the development of plans of service and to strengthen the skills of participants to address planned activities. Generally, MI Choice services are not used to replace existing unpaid supports, but rather bolster and help sustain ongoing allies' involvement.

#### **E. USE OF OTHER PAID SERVICES**

**Before authorizing MI Choice services for a participant, the waiver agency must take full advantage of services and supports in the community that are available to the participant and paid for by other fund sources, including third party reimbursements and the Medicaid State Plan services.** MI Choice funding is the payment source of last resort. Two exceptions are Physical Disability Services (PDS) funds and OSA in-home services funds. These are extremely limited fund sources and would be quickly exhausted if used for MI Choice participants. (Note: An executive order cut PDS funds from the FY 2010 budget. MDCH does not expect the Governor to reinstate these funds for FY 2014.)

#### **F. THIRD PARTY LIABILITY (TPL)**

**The waiver agency pursues and secures all TPL sources possible. Waiver agencies make every effort to enroll and utilize dually certified Medicare/Medicaid providers for counseling, training, private duty, and nursing services to maximize Medicare payment for services also available through 14-005867 EDW/Robert Hyde MI Choice.** Other TPL sources include the Veteran's Administration, Medicare skilled home health services, the Medicaid State plan, and other sources of LTC available to participants.

*Minimum Operating Standards for MI Choice Waiver Program Services,  
Attachment F, FY 2014, pages 14-15, 49*

The above standards relied upon by the Waiver Agency therefore do generally provide that MI Choice funding is the payment source of last resort and that the Waiver Agency must first take full advantage of other services and supports in the community that are available to Appellant and paid for by other fund sources, including third party reimbursements. Additionally, the above policy provides that MI Choice services may only bolster and sustain unpaid supports from allies.

The funds at issue in this case are available in the community and are designed to supplement the government benefits that Appellant was already receiving and might receive in the future.

The types of third parties or available payors specifically identified by the above policy are Medicare; Medicaid; the Veteran's Administration; Medicare skilled home health services; and the State plan; all of which are government programs. In this case, Medicare is identified as the third party payor and thus must be utilized.

Accordingly, this Administrative Law Judge finds the Waiver Agency's argument and reliance on the above policy to be persuasive with respect to the Waiver Agency's actions.


Therefore, for the reasons discussed above, this Administrative Law Judge finds the Waiver Agency acted appropriately in reducing the Appellant's hours.

**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 personal care services purchased by the MI Choice waiver program

**IT IS THEREFORE ORDERED** that:

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

  
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Corey A. Arendt  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

[REDACTED]  
Docket No. 2014-35630 EDW  
Decision and Order

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.