

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. 2014-35754 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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, Appellant's wife, appeared and testified on Appellant's behalf. ██████████, Manager of New Business Strategies, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████).

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 congestive heart failure; coronary artery disease; hypertension; arthritis; anxiety; depression; dementia; a stroke; a transient ischemic attack; and diabetes mellitus. (Respondent's Exhibit B, pages 1, 8-9).
3. Appellant had been receiving services through the Waiver Agency, including ██████████ hours per week of Community Living Supports (CLS). (Testimony of Appellant's representative; Testimony of ██████████).

4. That amount of services was authorized after Appellant returned from the hospital following his receipt of a kidney transplant and being diagnosed with diabetes in ██████████ (Respondent's Exhibit B, page 9; Testimony of Appellant's representative; Testimony of ██████████).
5. One of Appellant's daughters is his paid caregiver through the Waiver Agency's self-determination program while his wife is his primary informal support. (Respondent's Exhibit B, page 5; Testimony of Appellant's representative).
6. On ██████████ staff performed a routine reassessment in Appellant's home with Appellant and his wife/representative. (Respondent's Exhibit B, pages 1-16).
7. After reviewing the reassessment, the Waiver Agency determined that Appellant's services should be reduced to ██████ hours per week. (Respondent's Exhibit C, page 1; Testimony of ██████████).
8. On ██████████, the Waiver Agency sent Appellant written advance notice that his services would be reduced in ██████ days from the date of the notice. (Respondent's Exhibit A, pages 1-2).
9. The notice also informed Appellant of his right to appeal the reduction and stated that his services would remain in place if a request for hearing was received prior to the effective date of the reduction. (Respondent's Exhibit A, pages 1-2).
10. No such request was received and the reduction took effect. (Testimony of Appellant's representative; Testimony of ██████████).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Petitioner's Exhibit 1, pages 1-2).

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 CLS through the Waiver Agency and, 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, April 1, 2014 version
MI Choice Waiver Chapter, pages 12-13*

However, while CLS 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 he has been continually been authorized for CLS. 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's representative arguing that the 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 his 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.

The Waiver Agency's decision in this case was based on the assessment performed on █. In the report generated following that assessment, it was documented that Appellant's wife reported checking Appellant's blood sugar █ times a day and injecting insulin as ordered. (Respondent's Exhibit B, page 11). The report also provided that Appellant's wife stated that she must manage all of Appellant's meal preparation; housework; finances; medications; and shopping. (Respondent's Exhibit B, pages 12-14). The assessment report further provided that Appellant's wife stated that, with supervision, Appellant is generally able to dress, groom and toilet himself; but he does require limited assistance while bathing and she supervises him carefully for falls

while he showers. (Respondent's Exhibit B, pages 12-14). The assessment report also provided that Appellant demonstrated an ability to transfer himself and ambulate with the use of a cane. (Respondent's Exhibit B, page 14). Overall, it was determined that Appellant's condition had not changed since his last assessment, but had significantly improved from when his current services were put in place after his kidney transplant. (Respondent's Exhibit B, page 14; Testimony of ██████████)

In response, Appellant's representative testified during the hearing that Appellant needs to have someone assisting him with testing his blood sugar level tested ██████ times a day; injecting his insulin ██████ times day; getting up in the morning; walking around the house and getting into the bathroom; getting in-and-out of the bathtub; managing his medications; and preparing meals. (Testimony of Appellant's representative). She also testified that Appellant is a fall-risk and needs to be supervised at all times. (Testimony of Appellant's representative). She further testified that, prior to the reduction, her daughter would perform some of that assistance, but that, since the reduction, her daughter no longer has the time to perform blood sugar testing; insulin injections; or meal preparation. (Testimony of Appellant's representative). Instead, her daughter uses the authorized ██████ hours a day to walk, bathe and exercise Appellant. (Testimony of Appellant's representative). Appellant's representative also confirmed during the hearing that Appellant has improved since his services were initially put in place. (Testimony of Appellant's representative).

Here, given the available information, Appellant failed to meet his burden of proof and the Waiver Agency's decision must be affirmed. It is undisputed that Appellant has improved since his services were first approved and that he requires less assistance than before. Moreover, with respect to the assistance being provided, it appears that informal supports, *i.e.* Appellant's wife, were providing the majority of the assistance. As provided in the "Minimum Operating Standards for MI Choice Waiver Program Services" used by the Department and the Waiver Agency¹: "Generally, MI Choice services are not used to replace existing unpaid supports, but rather bolster and help sustain ongoing allies' involvement." (Respondent's Exhibit E, page 3). Appellant's testimony during the hearing did expand on what the formal care provider may have been doing, but she did not report such assistance at the time and the Waiver Agency was justified in relying upon what is reported and only authorizing the limited assistance identified as being needed from the paid care provider.

Accordingly, Appellant and his representative have failed to meet their burden of proving by a preponderance of the evidence that, given the information available at the time, the Waiver Agency erred in reducing his services and the Waiver Agency's decision must therefore be affirmed.

¹ MPM, April 1, 2014 version, MI Choice Waiver Chapter, page 17.

[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.