

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. 2014-35792 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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Contingent Nurse, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the Region ██████████ ("Waiver Agency" or "AAA"). ██████████, registered nurse/supports coordinator; ██████████, social worker/supports coordinator; and ██████████, Clinical Manager; testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly deny Appellant's request for additional Community Living Supports (CLS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. AAA 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 an ██████ year-old Medicaid beneficiary who has been diagnosed with congestive heart failure; coronary artery disease; chronic obstructive pulmonary disease; hypertension; osteoporosis; and arthritis.
3. Appellant has been receiving services through the Waiver Agency, including 28.5 hours per week of CLS. (Testimony of Appellant' Testimony of ██████████).
4. With respect to that CLS, Appellant utilizes 3.5 hours per day on Mondays;

4.5 hours per day on Tuesdays; 3.5 hours per day Wednesdays through Fridays; 2.5 hours per day on Saturdays and Sundays; and 5 hours per week on a flexible basis and as needed. (Testimony of Appellant).

5. On ██████████, ██████████ and ██████████ performed a routine reassessment in Appellant's home with Appellant. (Testimony of ██████████).
6. During that assessment, Appellant requested one additional hour of CLS per week, to be used on weekends. (Testimony of Appellant; Testimony of ██████████).
7. ██████████ reviewed Appellant's needs and also completed a care plan worksheet, which indicated that Appellant only required 22 hours per week of services. (Testimony of ██████████).
8. On ██████████, the Waiver Agency sent Appellant written notice that her request for an additional hour of CLS per week was being denied on the basis that her care needs did not warrant an increase. (Respondent's Exhibit A, page 1).
9. 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 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 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 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 she has been continually authorized for CLS. Instead, the sole dispute is the amount of such services to be authorized, with the Waiver Agency having authorized 28.5 hours per week and Appellant arguing that her services should be increased by one additional hour per week.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying her request. 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.

Given the information available at the time of the denial in this case, Appellant failed to meet her burden of proof and the Waiver Agency's decision must be affirmed. ██████████ credibly testified that she reviewed Appellant's needs and completed a care plan worksheet, which indicated that Appellant only required 22 hours per week of services, and Appellant was already receiving more than that. Similarly, while Appellant testified that she needed an additional hour of CLS on weekends, she also acknowledged that she was already using 5 hours on a flexible, as-needed basis and there is no indication that her needs were not being met at the time of the denial.

Moreover, while Appellant also argues that her services should be increased because her circumstances have changed and her medical conditions have worsened since the decision to deny her request was made, 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. Therefore, any subsequent changes are immaterial to this decision and order.

To the extent Appellant's circumstances have changed or her medical conditions have worsened, she can always re-request that her services be increased. With respect to the decision at issue in this case, however, the denial must be affirmed given the information available at the time.

[REDACTED]
Docket No. 2014-35792 EDW
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's request for additional 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 [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.