

**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. 2014-35816 EDW

██████████

██████████

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. ██████████, Appellant's care giver, also testified as a witness for Appellant. ██████████, Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████████"), nurse/supports coordinator, also testified as a witness for the Waiver Agency.

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; chronic obstructive pulmonary disease; hypertension; peripheral vascular disease; arthritis; anxiety; depression; a stroke; and diabetes mellitus. (Respondent's Exhibit B, pages 1, 7-8).
3. Appellant's left leg was also amputated below the knee and she has moderate edema in her right leg. (Respondent's Exhibit B, pages 7-8).
4. Appellant has been receiving services through the Waiver Agency, including ██████████ hours per week of Community Living Supports (CLS). (Respondent's Exhibit B, page 14).

5. On ██████████ performed a routine reassessment in Appellant's home with Appellant. (Respondent's Exhibit C, pages 1-15; Respondent's Exhibit B, pages 1-15).
6. During that assessment, Appellant reported that she is her own support system and takes care of herself when the workers are not there. (Respondent's Exhibit A, page 4).
7. Appellant also reported that a new fentanyl patch was taking care of her arthritic pain and allowing both improved mobility and the use of her hands. (Respondent's Exhibit A, page 13).
8. Overall, Appellant's functional status had improved, though she still required maximal assistance with housework and shopping; extensive assistance with meal preparation, toileting, and bathing; and limited assistance with dressing her lower body. (Respondent's Exhibit A, pages 11-13; Testimony of Appellant; Testimony of ██████████).
9. Based on the improvement in Appellant's health and her lessened need for assistance, the Waiver Agency decided to reduce her services. (Respondent's Exhibit A, page 13; Testimony of ██████████).
10. On ██████████, the Waiver Agency sent Appellant written notice that her services would be reduced from ██████ hours per week to ██████ hours per week in ██████ days from the date of the notice. (Respondent's Exhibit A, pages 1-2).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Petitioner's Exhibit 1, page 1).
12. As discussed above, a hearing was held on ██████████.
13. During that hearing, Appellant testified that, while she had improved and the reduction may have been warranted at the time of the decision, her health had subsequently worsened and she is no longer her own support system. (Testimony of 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 ██████████, 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 she 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 arguing that her 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 her 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.

Given the information available at the time of the reduction in this case, Appellant failed to meet her burden of proof and the Waiver Agency's decision must be affirmed. Appellant herself acknowledges the improvement she had shown and even agreed that the reduction was appropriate at the time.

Moreover, while Appellant also argues that her services should not be reduced because her circumstances have changed and her medical conditions have worsened since the decision to reduce her services 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 request that her services be increased. With respect to the decision at issue in this case, however, the reduction must be affirmed given the information available at the time.

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.