

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Christian, Adeline,

Appellant

Docket No. 2014-6633 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 [REDACTED]. Appellant appeared and testified on her own behalf. [REDACTED], registered nurse/clinical manager, represented the Department of Community Health's Waiver Agency, the [REDACTED] ("Waiver Agency" or "[REDACTED]"). [REDACTED] registered nurse/supports coordinator, and [REDACTED], social worker/supports coordinator, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency proper decide to reduce Appellant's services through 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 [REDACTED]-year-old female who has been diagnosed with congestive heart failure; coronary artery disease; hypertension; peripheral vascular disease; arthritis; anxiety; depression; aneurysm coronary vessel; sicca syndrome; and rheumatoid arthritis. (Respondent's Exhibit C, pages 1, 8-7-8).
2. [REDACTED] is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Appellant has been enrolled in and receiving MI Choice waiver services through [REDACTED], including a personal emergency response system unit; wound care; and [REDACTED] hours per week of Community Living Supports (CLS). (Respondent's Exhibit C, page 13).

4. On ██████████ staff conducted an in-home reassessment of Appellant's needs and services. (Respondent's Exhibit C, pages 1-15).
5. They also completed a Care Plan Worksheet, which subsequently recommended ██████ hours a week of CLS. (Respondent's Exhibit B, pages 1-3).
6. On ██████████ sent Appellant a written Advance Action Notice that her CLS would be reduced to ██████████ hours per week on ██████████ because her medical needs did not warrant her existing services. (Respondent's Exhibit A, page 1).
7. On ██████████ the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant. (Petitioner's Exhibit 1, page 1).
8. In making that appeal, Appellant does not dispute that some reduction in her services is in order and instead argues that the proposed reduction is too much. (Petitioner's Exhibit 1, page 1; Testimony of Appellant).
9. Given the timing of the request for hearing, the reduction was not implemented. (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)

In this case, as discussed above, Appellant has been receiving CLS through ██████████ 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, October 1, 2013 version
MI Choice Waiver Chapter, pages 12-13*

However, while CLS is a covered service, 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 CLS and she has continuously been receiving such services. Moreover, it is also undisputed that some reduction in Appellant's CLS was in order and the sole issue is the amount of that reduction. As discussed above, ██████ notified Appellant that it wants to reduce her CLS by █ hours per week, to █ hours a week total, while Appellant believes the reduction should only be █ hours, for █ hours a week of CLS total.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce her services.

With respect to Appellant's needs in this case, the Waiver Agency utilized a Care Plan Worksheet in determining the recommended amount of hours that should be authorized. (Testimony of Warner; Testimony of ██████). Taking into account Appellant's need for assistance with meal preparation; housework; laundry; shopping and errands; transferring; locomotion; and bathing; that worksheet subsequently recommended ██████ hours a week of CLS. (Respondent's Exhibit B, pages 1-3). Moreover, as Appellant also needs assistance during her medical appointments, the Waiver Agency went beyond the time recommended in the worksheet and authorized █ hours per week of CLS. (Testimony of Matthews).

In response, Appellant testified that she needs █ hours of CLS per week. That time would include more of the assistance identified by the Waiver Agency and Appellant did not identify any other specific tasks she needed help with. (Testimony of Appellant).

Specific times in dispute include assistance with laundry; shopping; and housework. For example, while ██████ found that Appellant needs █ hours per month for assistance with laundry, Appellant seeks █ to █ hours each week for that task. ██████ also found that Appellant needs █ hours per month for assistance with shopping while Appellant testified that she needs assistance with shopping █ to █ times a week, with each trip taking █ to █ hours. Finally, ██████ determined that ██████ found that Appellant needs █ hours per month of assistance with housework while Appellant seeks █ to █ hours every day of such assistance. (Testimony of Appellant; Respondent's Exhibit B, page 3).

Given the circumstances of this case, this Administrative Law Judge finds that Appellant has failed to meet her burden of proving that the Waiver Agency erred in reducing her CLS by [REDACTED] hours. [REDACTED] staff adequately detailed the process and reasoning behind the reduction while Appellant appears to seek excessive assistance with some tasks. For example, Appellant seeks [REDACTED] to [REDACTED] hours each week for assistance with laundry, but she is only one person and there is no showing that laundry for just her takes so much time. Moreover, even if the time from the start of laundry to the its finish does take [REDACTED] to [REDACTED] hours, there is no suggestion that the worker is only doing laundry during that time and the worker could perform other tasks while the machines are running. Similarly, this Administrative Law Judge finds that Appellant's request for [REDACTED] to [REDACTED] hours per day of assistance with housework to be excessive given that she lives in an apartment that only has [REDACTED] rooms total.

Appellant has the burden of justifying the additional hours she seeks and she failed to do so in this case. Accordingly, the Waiver Agency's decision must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly decided to reduce Appellant's CLS to [REDACTED] hours per week.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to reduce Appellant's services 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.