

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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. 2014-6639 EDW

██████████

██████████ ██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████, ██████████, Appellant's representative/mother appeared on behalf of Appellant. ██████████ Appellant's father, appeared as a witness for Appellant. Appellant appeared for the telephone hearing. ██████████ Waiver Program Director, represented the Department's Waiver Agency, ██████████, ██████████, Register Nurse (RN)/Case Manager, and ██████████, Social Worker/Case Manager, testified as witnesses for ██████████

ISSUE

Did the Waiver Agency properly reduce the Appellant's MI Choice Waiver 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. The Appellant is a ██████ year-old female Medicaid beneficiary enrolled in the MI Choice Waiver program.
2. Appellant has a history of cerebral palsy, developmental delay, seizure disorder, traumatic brain injury, diabetes mellitus, hypertension, arthritis, anxiety disorder, depression, and dementia. (Agency Exhibit A, p. 6 and Appellant Exhibit 1)
3. Appellant lives with her parents who have guardianship over her.

4. Appellant had been approved for █ hours per day/█ days per week of in-home Community Living Supports (CLS) Services which consisted of personal care and homemaking services. (Agency Exhibit A)
5. On ██████████, a review/reassessment of Appellant for MI Choice Waiver services was completed. (Agency Exhibit A)
6. During the reassessment it was noted that: Appellant needs supervision with transferring and ambulation; however, she is independent in her ability to do these activities; Appellant is independent in her ability to toilet, eat, and use the phone; she needs limited assistance with personal hygiene and dressing; she is occasionally incontinent; and she is totally dependent on others for meal preparation, shopping, house cleaning, transportation, medication management, and finance management. (Agency Exhibit A)
7. After completing the reassessment, the Waiver Agency determined that the clinical and psychological findings do not support a need for █ hours per day of services and proposed to reduce Appellant's service hours to █ hours per day. (Agency Exhibit A)
8. On ██████████ The Waiver Agency sent to the Appellant an Advance Action Notice, stating that Appellant's services were going to be reduced to █ hours daily/█ days per week. (Agency Exhibit A, p. 20)
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's hearing request, protesting the reduction of her MI Choice Waiver Services.

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

This Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MIChoice in Michigan. The program is funded through the federal Health

Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, 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)*

1915 (c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b)).

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (42 CFR 440.180(a)).

Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

- 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 HCFA as cost effective

and necessary to avoid institutionalization. 42 CFR 440.180(b)

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

The issue appealed is whether the Waiver Agency properly determined Appellant's program services hours. At reassessment in ██████████ the Waiver Agency determined that the clinical and psychosocial findings do not show a need for █ hours per day/█ days per week of personal care and homemaking services. The Waiver Agency stated that individuals with similar diagnostic and functional limitations as Appellant are receiving less than █ hours per day for the same diagnosis and similar physical functional abilities as Appellant.

Appellant's mother/representative testified that Appellant needs more services hours or care than what is being provided. She submitted letters from qualified medical sources which state that Appellant's parents give her around the clock care and need to continue having aides come in and provide respite to give Appellant's parents some relief during the day to sleep, go shopping, etc. Additionally, a qualified medical source stated that because of Appellant's multiple medical issues and the severity of these issues, she does not recommend decreasing the frequency or time of the services. (Appellant Exhibits 1-3)

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing her services. In this case, Appellant has failed to meet her burden of proving that it is medically necessary that she receive █ hours per day instead of █ hours per day of personal care and homemaking services/█ days per week. The Waiver Agency representative and witnesses provided evidence to establish that the results of the reassessment were based on a face-to-face interview with the Appellant, and Appellant's responses to questions posed during the reassessment. The Waiver Agency representative and witness testified that in an in-person MI Choice services review was conducted with the Appellant in her home. One of the Waiver Agency witnesses, a registered nurse, completed the reassessment of Appellant and explained that the results revealed: Appellant needs supervision with transferring and ambulation; however, she is independent in her ability to do these activities; Appellant is independent in her ability to toilet, eat, and use the phone; she needs limited assistance with personal hygiene and dressing; she is occasionally incontinent; and she is totally dependent on others for meal preparation, shopping, house cleaning, transportation, medication management, and finance management. The reassessment of Appellant's eligibility for MI Choice Waiver services was compiled and completed by a Department agent

who is trained to identify areas in which a beneficiary needs personal assistance. The evidence on the record establishes that Appellant has significant medical issues which require her to have significant care. However, Appellant also has parents who live with her and are able to provide her with significant informal supports.

In conclusion, the Waiver Agency provided sufficient evidence that its reduction of service hours was proper. Accordingly, the MI Choice Waiver Agency's decision must be upheld.

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 MIChoice Waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

/s/

Marya A. Nelson-Davis
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]
Date Mailed: [REDACTED]

MAND/db

cc: [REDACTED]

***** NOTICE *****

The State Office of Administrative Hearing and Rules 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 State Office of Administrative Hearing and Rules 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.