

**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. 2014-6642 EDW

██████████
Appellant
_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████ Appellant appeared and testified on his own behalf. ██████████ Appellant's provider also testified on the Appellant's behalf.

██████████, R.N., Clinical Manager, ██████████, appeared and testified on behalf of the Department's Waiver Agency. ██████████ R.N., Nurse Supports Coordinator, ██████████, also testified on behalf of the Department's Waiver Agency.

ISSUE

Did the Waiver Agency act properly in reducing the Appellant's CLS services under the MI Choice Waiver program from ██████ hours per week down to ██████ hours per week?

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 Medicaid beneficiary who is enrolled in the MI Choice Waiver program. Appellant had been receiving ██████ hours per week of CLS through Self Determination. (Exhibit A, pp. 1, 2, 4 and testimony).
2. The Appellant is a ██████-year-old man (██████████) (Exhibit A, p. 8 and testimony).

3. On ██████████ a ██████-day reassessment was conducted with the Appellant and his provider who lives with him, by ██████████ LLBSW, and ██████████, R.N., in the Appellant's apartment. A new Care Plan Worksheet was completed based on the reassessment and the worksheet recommended ██████ hours per month or ██████ hours per week. The Waiver Agency determined there was a need for some meal prep, housework, laundry, managing meds, and dressing for the Appellant. (Exhibit A, pp. 2, 3-18, 19 and testimony).
4. On ██████████, an Advance Action Notice was sent to the Appellant stating effective ██████ days for the date of the notice his CLS would be reduced to ██████ hours per week on a Self Determination basis. (Exhibit A, p. 3 and testimony).
5. On ██████████, MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 1).

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.

This Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies 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. [42 CFR 430.25(c)(2)].

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).

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).

The *Medicaid Provider Manual, MI Choice Waiver*, October 1, 2013, provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. [p. 1].

* * *

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections. [p. 9].

* * *

4.1.B. HOMEMAKER

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance) provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator. [p. 9, emphasis added].

4.1.C. PERSONAL CARE

Personal Care services encompass a range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the participant) or cueing to prompt the participant to perform a task. Personal Care services are provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law.

Services provided through the waiver differ in scope, nature, supervision arrangement, or provider type (including provider training and qualifications) from Personal Care services in the State Plan. The chief differences between waiver coverage and State Plan services are those services that relate to provider qualifications and training requirements, which are more stringent for personal care provided under the waiver than those provided under the State Plan.

Personal Care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. These services may also include assistance with more complex life activities. The service may include the preparation of meals but does not include the cost of the meals themselves.

When specified in the plan of service, services may also include such housekeeping chores as bed making, dusting, and vacuuming that are incidental to the service furnished or that are essential to the health and welfare of the participant rather than the participant's family. Personal Care may be furnished outside the participant's home. [p. 10, emphasis added].

* * *

4.1.H. CHORE SERVICES

Chore Services are needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Other covered services might include yard maintenance (mowing, raking and clearing hazardous debris such as fallen branches and trees) and snow plowing to provide safe access and egress outside the home. These types of services are allowed only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other relative, caregiver, landlord, community or volunteer agency, or third party payer is capable of, or responsible for, their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service.

4.1.I. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) services facilitate an individual'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, non-medical 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 individual'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 individual so they may reside and be supported in the most integrated 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 may not 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's plan of service. 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. [pp. 12-13].

The issue appealed is whether the Waiver Agency properly reduced the Appellant's CLS from █ hours per week down to █ hours per week. Appellant appealed the reduction and has stated he wants his CLS hours maintained at █ hours per week.

The Waiver Agency's witnesses testified a █-day reassessment for MI Choice Waiver services was conducted with the Appellant and █ Appellant's provider who also lives with the Appellant, on █ by █ LLBSW, and █, R.N. (See Exhibit A, pp. 2, 8-22). It was determined by the social worker and the nurse that the Appellant continued to qualify for the MI Choice Waiver program, that the Appellant needed some assistance with meal prep, housework, laundry, managing meds and dressing, and that there were some informal supports in place in the home. The Waiver Agents determined that the Appellant had made some improvements since his last assessment.

A new Care Plan Worksheet was completed during the reassessment on █ based upon the information provided by the Appellant and his provider, and the worksheet recommended █ hours per month or █ hours per week of CLS services. The Waiver Agency's reassessment showed Appellant needed maximal assistance with meal preparation and cleanup which figured out to █ hours per month. Appellant was totally dependent for housework which figured out to █ hours per month. Appellant was totally dependent for laundry which figured out to █ hours per month. Appellant needed

maximal assistance with medications which figured out to █████ hours per month. Appellant needed limited assistance with dressing which figured out to █████ hours per month. Thereafter, on █████ an Advance Action Notice was sent to the Appellant stating effective █████ days for the date of the notice his CLS would be reduced to █████ hours per week on a Self Determination basis.

The Agency's witnesses indicated the Appellant and his provider have a shared living arrangement in a private residence. For formal services for the Appellant the Waiver Agency recommended █████ hours a week based upon the Care Plan worksheet prepared during the reassessment. The hours for these needed services were authorized on a self-determination basis, and Appellant's provider who lives with the Appellant is the one providing these services.

The Supports Coordinators found that the Appellant's provider was an informal support, and since she also was living in the same residence with the Appellant she would be providing some services as an informal support. Also many of the services provided for the Appellant were shared services, i.e., she cooked her own meals and did her own laundry at the same time as she provided these services for the Appellant. █████ noted that since the reassessment Appellant and his provider had moved into a house that they were purchasing together. █████ did not find that the Appellant's needs for personal assistance had changed just because of the move into the house.

The Agency's witnesses also pointed out that prior to the proposed reduction in services, there had not been a request for any chore services such as mowing the lawn, raking leaves, or snow removal. The Waiver Agency's witnesses also stated that the Agency does not replace informal supports that are in place with waiver services. This is particularly true where those informal supports serve the needs of others who live in the residence, and not just the participant. The Agency is responsible for serving the particular needs of the Appellant above and beyond things done for the household in general.

The record shows that there was no formal request for any chore services prior to the issuance of the Advance Action Notice on █████. The Waiver Agency supports the proposed reduction in CLS hours, based on the fact that the Appellant's provider is purchasing the residence along with the Appellant, that she is already responsible at least in part for the proposed chore services, and because it has not been shown that the provider and co-owner of the residence is unable to provide or pay for these services.

Appellant testified he had previously been receiving █████ hours per week of CLS services. He indicated he is limited with his ankle fusion and currently has a brace on his ankle and he also has asthma. Appellant stated his issue is that he is living in a house now rather than the apartment. He indicated there is more upkeep needed for the house and █████ hours is not enough time for the caregiver to provide the needed services. Appellant alleged the Agency was trying to force him out of the program, and he indicated he had a hearing earlier in the year where they tried to say he was no longer eligible for the program.

Appellant stated he did not think this should all be put on ██████████. He said he would like additional hours, but would be satisfied if they were allowed to keep the ██████ hours previously authorized.

Appellant's provider testified that she was confused about the number of hours being proposed. She said she does all the housework and all the shopping. She said Appellant needs help putting on his shoes and socks and she assists with some of his personal hygiene. Appellant's provider stated they have a bigger house to clean, and she has had to rake the yard ██████ times already this year. She said she will also have to shovel snow on a long driveway, and keep the steps and a ramp cleared so they will be able to get in and out of the house. The Appellant's provider acknowledged that she and the Appellant were buying the house together. She also acknowledged that the shopping, cooking and housework she did were for all the residents in the house, including her mother who moved into the house within the past couple of weeks.

The Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency did not act properly in reducing his MI Choice Waiver services. The testimony of the Appellant and his provider did not establish that the Waiver Agency acted improperly when it proposed a reduction in his CLS services. The Waiver Agency acted in accordance with the Medicaid policy quoted above. The Waiver Agency cannot provide waiver services that benefit the household in general, but only services which meet the specific needs of the Appellant. The preponderance of the evidence in this case shows that the services authorized are sufficient to meet the Appellant's individual needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency acted properly when it reduced the Appellant's CLS services under the MI Choice Waiver program from ██████ hours per week down to ██████ hours per week.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]
Docket No. 2014-6642 EDW
Hearing Decision & Order

WDB/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.

