

**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. 15-000461 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. upon Appellant's request for a hearing.

On ██████████ MAHS received a request for an administrative hearing filed by Appellant regarding an adverse action. On ██████████ MAHS scheduled an administrative hearing for ██████████. On ██████████ Appellant requested an adjournment. Respondent did not object. The matter was adjourned and the 90 day statutory time ran against Appellant and not the Department. On ██████████ MAHS issued a Notice of Rescheduled Telephone Hearing which was held on ██████████. On ██████████ the undersigned administrative Law Judge (ALJ) issued a decision in this matter. On ██████████ the undersigned ALJ was informed that the MAHS MCL system incorrectly issued a Dismissal Order on ██████████ with an automated signature stamp for the ALJ. Respondent subsequently contacted MAHS regarding the error. It is therefore ordered that the Order of Dismissal issued by MAHS dated ██████████ is hereby withdrawn, and instead, the following Decision and Order is issued.

At the ██████████ telephone hearing, Appellant personally appeared and testified. Appellant's caregiver-Johanna Hamilton appeared as a witness on behalf of Appellant.

██████████, Assistant Director, ██████████ Nurse Care Manager, RN, and ██████████, Social Work Supervisor appeared as witnesses on behalf of the ██████████ ██████████, the Department's MI Choice Waiver Agency, (AAA or Waiver Agency).

ISSUE

Did the Waiver Agency properly reduce Appellant's Community Living Supports (CLS) from 35 hours per week to 21 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:

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1. The Department contracts with ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A, Testimony)
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Testimony)
3. Appellant is a ██████ year-old Medicaid beneficiary, diagnosed with HIV, Hep A, B, C, CHF, diabetes, pain. (Exhibit A.21; Testimony)
4. Appellant lives her daughter, who is also her paid caregiver, as well as her grandchildren. (Exhibit A; Testimony)
5. On ██████████ an adult protective services worker contacted the Nurse Manager to report that there was no evidence to support Appellant needing 5 hours of care provided through the waiver program; and indicated that the condition of the home did not reflect that housekeeping was being provided. (Exhibit A.1)
6. Following an in-home reassessment on ██████████, the Waiver Agency determined that Appellant's CLS hours would be reduced from 35 hours per week to 21 hours per week based on Appellant's current needs for hands on assistance. (Exhibit A; Testimony)
7. In determining the amount of CLS hours Appellant was entitled to, the Waiver Agency utilized a Compass Assessment Report for calculating service hours. Progress notes indicate that Appellant met the Agency representative at the door without assistance; represented that she was dying and needed more help but did not feel she qualified for hospice. Appellant requested Meals on Wheels which was started ██████████. Appellant requested incontinence products and was given the phone number for the supplier. Appellant requested nutritional supplements and was provided with the necessary for form for her physician to complete but as of the administrative hearing, no form had been returned. Appellant's statements regarding the housekeeping issues indicated that she just had her place fumigated for bed bugs. Regarding specific needs for care, Appellant gave vague and contradictory statements. (Exhibit A).
8. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice informing her that CLS hours would be reduced from 5 hours 7 days per week, to 21 hours per week, effective 12 days from the date of the notice. (Exhibit A; Testimony)
9. On ██████████, the Michigan Administrative Hearing System received a request for hearing from Appellant. (Exhibit 1). The action was reinstated pending the outcome of the administrative hearing.

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 MI Choice Policy Chapter to the *Medicaid Provider Manual, MI Choice Waiver*, provides in part:

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.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.

Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2014, pp 12-13

The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. *42 CFR 440.230*. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

Appellant bears the burden of proving, by a preponderance of evidence, that the hours she is requesting are medically necessary.

The Waiver Agency witness testified that Appellant's CLS hours were reduced based on the fact that the residence did not reflect that housekeeping services were being provided, and based on statements made by Appellant regarding her needs. The agency representative verified the APS report that the home was cluttered and did not reflect needs for housekeeping services. The Agency indicated that Appellant met the agency representative at the door that she lives in a shared household, and that based on a person centered plan and professional judgement, the 21 hours are sufficient to meet the hours.

Appellant's request for Meals on Wheels was satisfied. The Appellant's request for incontinence products and nutritional supplements was addressed by the agency and information given to Appellant as to how to complete the paperwork process.

This ALJ finds that the credible and substantial evidence of record supports that the Waiver Agency properly reduced Appellant's CLS hours from 35 hours per week to 21 hours per week. The evidence presented demonstrated that Appellant lives in a shared

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household, has significant informal support and that her actual care needs can be met with 21 CLS hours per week.

Appellant has the burden of proof by a preponderance of evidence to show that the Waiver Agency's action was incorrect. Appellant has not done so, based on the evidence here. Credible and substantial evidence of records support the proposed reduction and thus, the Agency's action must be upheld.

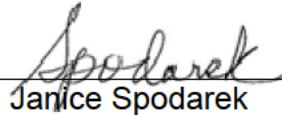
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, Orders that the [REDACTED] Order of Dismissal issued in this matter by the automated MCL MAHS computer system was incorrect and is hereby, withdrawn, and

It further ordered that the MI Choice Waiver agency properly proposes to reduce Appellant's CLS hours from 35 hours per week to 21 hours per week, and

IT IS THEREFORE ORDERED that:

The Department's proposed decision is AFFIRMED.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

cc:

[REDACTED]

JS/ [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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***** 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.