

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
P.O. Box 30763, Lansing, MI 48909  
Phone: (877)-833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

\_\_\_\_\_,  
Appellant  
\_\_\_\_\_ /

**CASE INFORMATION**

Docket No.: 15-008540-EDW

Case No.: \_\_\_\_\_

Appellant:

\_\_\_\_\_

Respondent:

\_\_\_\_\_

**HEARING INFORMATION**

Hearing Date: \_\_\_\_\_

Start Time: \_\_\_\_\_

Location

Telephone Hearing

**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 telephone hearing was held on \_\_\_\_\_. Appellant appeared and testified on her own behalf. Sara Walters (friend) appeared as a witness for the Appellant.

\_\_\_\_\_, MI Choice Waiver Director, appeared on behalf of the Department's Waiver Agency (AAA). \_\_\_\_\_ Case Coordinator, appeared as a witness on behalf of the Department's Waiver Agency.

**ISSUE**

Did the AAA act properly in denying the Appellant's request for an increase in Community Living Supports (CLS) services under 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. The Department contracts with AAA to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. AAA 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 ██████████ Medicaid beneficiary born ██████████. (Testimony)
4. Appellant lives with her mother and father and receives informal supports from her mother, father and sister. (Testimony)
5. As of ██████████, the Appellant was receiving home delivered meals 4 times a week; CLS of 5 hours a day 5 days a week and 3 hours a day 2 days a week; Supports Coordination of 1 unit per month and as needed; and 2 hours of personal care 6 days a week from the Appellant's automotive insurance carrier. (Exhibit A; Testimony)
6. On ██████████, the Appellant spoke with her Supports Coordinator ██████████ and requested an increase of 6 additional CLS hours a week for cleaning, errands and taking the Appellant to the pool. (Exhibit A; Testimony)
7. On ██████████, ██████████ discussed the Appellant's request with her Supervisor and determined the request should be denied as there was no indication of a significant decline in the Appellant's physical health or functioning, no increase in medical needs to support additional hours and the Appellant's informal supports could assist in cleaning, errands and taking the Appellant to the pool.
8. On ██████████, the Michigan Administrative Hearing System received a request for hearing from Appellant.
9. At all times relevant to this matter, the Appellant's mother ██████████ was the paid CLS provider for the Appellant. (Testimony)
10. At times relevant to this matter, the Appellant's mother was providing between 70 and 80 hours a week of care for the Appellant. (Testimony)

### **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].

##### **4.1.1. 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 allocated CLS hours per week are insufficient and that additional CLS hours are medically necessary.

The AAA witness testified that request for additional CLS hours was denied as at the time there

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was no indication of a significant decline in the Appellant's physical health or functioning, no increase in medical needs to support additional hours and the Appellant's informal supports could assist in cleaning, errands and taking the Appellant to the pool.

The Appellant argued that due to declining health, her mother could no longer act as an informal support and therefore she was seeking additional CLS hours.

The Appellant's argument however was confusing as she also testified that her mother was providing at times between 70 and 80 hours of care a week much of which was unpaid.

If the Appellant's mother is in fact providing between 70-80 hours of care a week, she then more likely than not is able to continue being an informal support.

Additionally, the Appellant was offered an option of having someone else provide the paid CLS work other than her mother to help alleviate her mother's burden. The Appellant however had no interest in the option and maintained that she wanted her mother to be a paid provider.

The Appellant did not provide any evidence that her own health was deteriorating and did not provide any evidence other than her own testimony that her mother's health was also deteriorating.

The Appellant's witness ( ) testified the current allocation of CLS hours was insufficient. Ms. Walters does not have a health related professional license and did not provide any testimony as to the Appellant's informal supports and what they were able to provide.

The Appellant bears the burden of proving, by a preponderance of evidence that the Waiver Agency did not act properly in denying her request for additional MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted properly in denying an increase in the Appellant's MI Choice Waiver services on .

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly denied Appellant's request to increase her CLS hours.

**IT IS THEREFORE ORDERED** that:

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

  
\_\_\_\_\_

Corey A. Arendt  
Administrative Law Judge  
for Director, Nick Lyon

Michigan Department of Health and Human Services

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.