

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 15-021492 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.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████ Daughter, appeared as a witness for Appellant. ██████████, Program Director, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, ██████████ ("Waiver Agency" or "██████████"). ██████████, RN Nursing Supervisor, and ██████████, RN Supports Coordinator.

ISSUE

Did the Waiver Agency reduce Appellant's Community Living Supports (CLS) 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. ██████████ is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. The Waiver Agency must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.

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3. Appellant is a [REDACTED] year old Medicaid beneficiary.
4. Appellant was receiving CLS through the MI Choice Waiver program with her daughter as the Self Determination Caregiver. (Exhibit 8; Testimony)
5. On [REDACTED], a report from Appellant's visiting nurse indicated that Appellant had not been allowing her daughter to provide care in the amount that was authorized and had been previously agreed upon. (Exhibit 8, p. 6; Testimony)
6. On [REDACTED], Appellant reported that following an argument on [REDACTED], she was not allowing her daughter to care for her at all. It was confirmed that Appellant's needs for assistance/safety concerns were still being met without Appellant's daughter providing all the care. Appellant declined to have a different family member or friend provide CLS and did not want an outsider from an agency. Appellant agreed to have her daughter provide only certain types of assistance and to have the CLS reduced to 2 hours per day. (Exhibit 8, pp. 5-6; Testimony)
7. On [REDACTED], the Waiver Agency sent Appellant an Adequate Action Notice informing her that the CLS hours would be reduced per her direction. (Exhibit 6, p. 1.)
8. On [REDACTED] 5, Appellant was agreeable to having the CLS remain as it was for a couple weeks, but requested that her daughter's full CLS hours be reinstated if things continue to go well. (Exhibit 8, p. 4; Testimony)
9. On [REDACTED], Appellant's visiting nurse indicated there were no concerns with Appellant's health and safety in the home at that time. (Exhibit 8, p. 3; Testimony)
10. On [REDACTED], Appellant requested to have her daughter's CLS hours reinstated so that she has a job. Appellant could not be specific regarding how things had improved with her daughter or what changes occurred to support an increase in the CLS hours. (Exhibit 8, p. 3; Testimony)
11. On [REDACTED], Appellant and her daughter again questioned the CLS reduction and indicated more than 2 hours per day was needed. The Waiver Agency encouraged Appellant's daughter to keep track of time spent on daily tasks. (Exhibit 8, p. 3; Testimony)
12. On [REDACTED], Appellant requested an administrative hearing to contest the CLS reduction. (Exhibit A, p. 1)

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13. On [REDACTED], Appellant requested more CLS hours so that her daughter can pay for her car and gas. It was suggested that a time study be completed to show the amount of time Appellant's daughter provides care for Appellant. A note book and envelopes were left and weekly documentation was encouraged. It was explained that after 4 weeks of documentation, CLS hours would be re-examined and adjusted if justified. (Exhibit 8, pp. 1-2; Testimony)
14. On [REDACTED], Appellant's daughter indicated she was continuing to work on the time study and would send in after 2 weeks of charting was completed. (Exhibit 8, p. 1; Testimony)
15. The Waiver Agency received a 20 day time study the week prior to the [REDACTED] [REDACTED], telephone hearing proceedings. (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. 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.

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 Health and Human Services (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 Chapter, October 1, 2015*, provides in part:

4.1.H. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) facilitate an individual’s independence and promote participation in the community. CLS can be provided in the participant’s residence or in community settings. CLS include assistance to enable participants to accomplish tasks that they would normally do for themselves if able. The services may be provided on an episodic or a continuing basis. The participant oversees and supervises individual providers on an ongoing basis when participating in self-determination options. Tasks related to ensuring safe access and egress to the residence are

authorized 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/volunteer agency, or third party payer is capable of or responsible for their provision. When transportation incidental to the provision of CLS is included, it shall not also be authorized as a separate waiver service for the participant. Transportation to medical appointments is covered by Medicaid through MDHHS.

CLS includes:

- Assisting, reminding, cueing, observing, guiding and/or training in household activities, ADL, or routine household care and maintenance.
- Reminding, cueing, observing and/or monitoring of medication administration.
- Assistance, support and/or guidance with such activities as:
 - Non-medical care (not requiring nurse or physician intervention) – assistance with eating, bathing, dressing, personal hygiene, and ADL;
 - Meal preparation, but does not include the cost of the meals themselves;
 - Money management;
 - Shopping for food and other necessities of daily living;
 - Social participation, relationship maintenance, and building community connections to reduce personal isolation;
 - Training and/or assistance on activities that promote community participation such as using public transportation, using libraries, or volunteer work;
 - Transportation (excluding to and from medical appointments) from the participant's residence to community activities, among community activities, and from the community activities back to the participant's residence; and
 - Routine household cleaning and maintenance.

- Dementia care including, but not limited to, redirection, reminding, modeling, socialization activities, and activities that assist the participant as identified in the individual's person centered plan.
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside and be supported in the most integrated independent community setting.
- Observing and reporting any change in the participant's condition and the home environment to the supports coordinator.

These service needs differ in scope, nature, supervision arrangements, or provider type (including provider training and qualifications) from services available 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.

CLS services cannot be provided in circumstances where they would be a duplication of services available under the State Plan or elsewhere. The distinction must be apparent by unique hours and units in the approved service plan.

*Medicaid Provider Manual
MI Choice Waiver Chapter
October 1, 2015, pp. 14-15*

6.1 PERSON-CENTERED PLANNING

Person-centered planning (PCP) is a process for planning and supporting a participant receiving services that builds on the participant's desire to engage in lawful activities that promote community life and that honor the participant's preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the participant desires or requires. Waiver agencies and direct service providers must utilize a PCP process, informing the participant of service options in ways that are meaningful. This includes assessing the needs and desires of the participant, developing service and support plans, and continuously updating and revising those plans as needs and desires change. The participant and their chosen representative(s) must be provided with written information

from the waiver agency detailing the right to participate in the PCP process. Waiver agencies and direct service providers implement PCP in accordance with the MDHHS Person-Centered Planning Guideline document that is an attachment to the waiver agency provider contract.

*Medicaid Provider Manual
MI Choice Waiver Chapter
October 1, 2015, p. 27
(underline added by ALJ)*

Similarly, *Attachment N to the SD in LTC Contract Requirements, FY 2016, p. 27*, states that the Supports Coordinator may adjust the budget based on the needs of the participant. (Exhibit 3, p. 2).

In this case, on ██████████, a report from Appellant's visiting nurse indicated that Appellant had not been allowing her daughter to provide care in the amount that was authorized and had been previously agreed upon. (Exhibit 8, p. 6; Testimony)

On ██████████, a meeting was held at Appellant's home. Appellant reported that following an argument on ██████████, she was not allowing her daughter to care for her at all. It was confirmed that Appellant's needs for assistance/safety concerns were still being met without Appellant's daughter providing all the care. Appellant declined to have a different family member or friend provide CLS and did not want an outsider from an agency. Appellant agreed to have her daughter provide only certain types of assistance and to have the CLS reduced to 2 hours per day. (Exhibit 8, pp. 5-6; Testimony) Accordingly, on ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing her that the CLS hours would be reduced per her direction. (Exhibit 6, p. 1.)

During a ██████████, telephone conversation, Appellant was agreeable to having the CLS remain as it was for a couple weeks, but requested that her daughter's full CLS hours be reinstated if things continue to go well. (Exhibit 8, p. 4; Testimony)

On ██████████, Appellant's visiting nurse indicated there were no concerns with Appellant's health and safety in the home at that time. (Exhibit 8, p. 3; Testimony)

During a ██████████, telephone conversation, Appellant requested to have her daughter's CLS hours reinstated so that she has a job. Appellant could not be specific regarding how things had improved with her daughter or what changes occurred to support an increase in the CLS hours. (Exhibit 8, p. 3; Testimony)

During a ██████████, telephone conversation, Appellant and her daughter again questioned the CLS reduction and indicated more than 2 hours per day was needed. The Waiver Agency encouraged Appellant's daughter to keep track of time spent on daily tasks. (Exhibit 8, p. 3; Testimony)

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On [REDACTED], Appellant requested more CLS hours so that her daughter can pay for her car and gas. It was suggested that a time study be completed to show the amount of time Appellant's daughter provides care for Appellant. A note book and envelopes were left and weekly documentation was encouraged. It was explained that after 4 weeks of documentation, CLS hours would be re-examined and adjusted if justified. (Exhibit 8, pp. 1-2; Testimony)

On [REDACTED], Appellant's daughter indicated she was continuing to work on the time study and would send in after 2 weeks of charting was completed. (Exhibit 8, p. 1; Testimony)

The Waiver Agency received a 20 day time study the week prior to the [REDACTED], telephone hearing proceedings. (Testimony)

The Waiver Agency asserted that the reduction to Appellant's CLS hours was appropriate based on Appellant's request for the decrease in her CLS hours to 2 hours per day with her daughter only providing certain types of assistance. The Waiver Agency further indicated that when Appellant initially requested the CLS hours be increased to the previously authorized amount, 5 hours per day, the Waiver Agency determined that Appellant's needs were being met with the reduced hours of care and Appellant did not identify any allowable basis to support an increase in the CLS authorization.

Appellant and her daughter disagree with the reduction of Appellant's CLS hours. They indicated that Appellant previously had similar issues with getting along with her daughter and allowing care to be provided, but these issues got worked out. Further it was asserted that Appellant did not really understand what she was agreeing to regarding the reduction to only 2 hours per day of CLS. Rather, Appellant believed she was only agreeing to a two week trial to see if it would work out. Appellant's daughter acknowledged that a thorough explanation was provided to Appellant when the reduction was discussed, but noted that even just after that meeting Appellant did not understand what she had agreed to. Appellant's daughter also explained that it took her a while to get her mother to understand that the increased CLS hours had nothing to do with having a job or affording a car and gas, but were really about Appellant's needs for assistance. Appellant testified that it did not even take two weeks to work things out with her daughter, they are getting along beautifully. Appellant stated that the only things she can do for herself are feed herself and wipe her butt.

Overall, the Waiver Agency has provided sufficient evidence to establish that the reduction to Appellant's CLS hours was appropriate based on the information available at that time. It is understood that Appellant has some cognitive impairments and history of periods that she does not get along with her daughter to allow care to be provided. However, the Waiver Agency properly addressed the [REDACTED], report from the visiting nurse that Appellant had not been allowing her daughter to provide care in the amount that was authorized and had been previously agreed upon by holding a meeting at Appellant's home the next day. Appellant, her husband, her daughter, and a friend/informal caregiver were present. It appears that Appellant reluctantly agreed to

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allow her daughter to provide some limited care with the CLS hours being reduced to 2 hours per day. Appellant declined other options for CLS and it was confirmed that her needs for assistance/safety concerns were still being met without Appellant's daughter providing all the care. (Exhibit 8, pp. 5-6; Testimony) Further, Appellant continued to agree with the reduced CLS hours, at least for a trial period, during the ██████████, ██████████, telephone conversation. (Exhibit 8, p. 4) The Medicaid Provider Manual allows for CLS hours to be adjusted based on the needs and desires of the participant. Appellant's CLS hours were adjusted to reflect the care she was going to allow her daughter to provide, Appellant declined other options for CLS, and it was confirmed that her needs would be met with the reduced CLS hours.

When Appellant began requesting the CLS hours be returned to the previously authorized 5 hours per day, the reasons she stated for the increase were not allowable, such as her daughter having a job or paying for a car and gas. Appellant could not specify how things had improved with her daughter or what changes occurred to support an increase in the CLS hours. (Exhibit 8, p. 3; Testimony) During the time the CLS hours were reduced, the Waiver Agency also confirmed with the visiting nurse that there were no concerns with Appellant's health and safety in the home at that time. (Exhibit 8, p. 3; Testimony) Accordingly, the information available to the Waiver Agency indicated the reduced CLS hours continued to be sufficient to meet Appellant's needs for assistance. Further, the Waiver Agency has provided sufficient evidence to establish that they are acting on Appellant's ongoing requests for an increase in her CLS hours, such as requesting a time study to obtain documentation of the amount and types of care Appellant's daughter actually provides.

Accordingly, Appellant has failed to meet her burden of showing by a preponderance of the evidence that the Waiver Agency improperly reduced her CLS hours. The Waiver Agency appropriately adjusted Appellant's CLS hours to reflect the care she was going to allow her daughter to provide, Appellant declined other options for CLS, and it was confirmed that Appellant's needs would be met with the reduced CLS hours. When Appellant began requesting an increase in CLS hours to previously authorized amount, she did not identify an allowable reason to support the increase. Lastly, it cannot be found that the Waiver Agency has failed to act with reasonable promptness in response to the ongoing requests to increase Appellant's CLS hours. For example, the requested time study documenting the amount and types of care Appellant's daughter actually provides was only submitted to the Waiver Agency the week prior to the ██████████, ██████████, telephone hearing proceedings.

[REDACTED]
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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 reduced Appellant's CLS services based on the information available at the time of the determination.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **AFFIRMED**.



Colleen Lack
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of
Health and Human Services

Date Mailed: [REDACTED]

CL/cg

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.