

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-014526 EDW

██████████

██████████

██████████

Appellant

_____ /

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 ██████████. Appellant initially appeared on his own behalf before subsequently indicating on the record that he wanted his sister to represent him. Thereafter, ██████████, Appellant's sister, appeared and testified on his behalf. ██████████, Hearing Officer, appeared and testified on behalf of the Michigan Department of Health and Human Services' Waiver Agency, ██████████ ("Waiver Agency" or ██████████). ██████████, registered nurse, and ██████████, social worker, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce Appellant's 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 Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Appellant had been receiving services through the Waiver Agency, including ██████████ hours per week of Community Living Supports ("CLS"). (Testimony of Respondent's representative).

3. The CLS was provided through the Waiver Agency's Self-determination program and was for assistance with showering, meal preparation, dressing, taking medications, homemaking, laundry, shopping, and supervision. (Testimony of Respondent's representative).
4. Appellant's sister was his self-determination worker. (Testimony of Appellant's representative).
5. She was also the self-determination worker for their mother, who also received waiver services through Respondent. (Testimony of Appellant's representative).
6. All three lived in the same residence. (Testimony of Appellant's representative).
7. On or about ██████████, the Waiver Agency's registered nurse and social worker conducted a home assessment with Appellant and his sister. (Testimony of Respondent's registered nurse).
8. During that assessment, the registered nurse determined that, for some of the tasks that Appellant was authorized to receive assistance with, such as meal preparation and parts of homemaking, Appellant's sister was completing the task for Appellant, his sister, and their mother at the same time. (Testimony of Respondent's registered nurse).
9. The registered nurse and Appellant's sister also went through the tasks that Appellant needed assistance with and how long such assistance took. (Testimony of Respondent's registered nurse).
10. The Waiver Agency's social worker further determined during the home assessment that some of the tasks that Appellant was authorized for assistance with, like cleaning his room, were not being performed by his sister as Appellant's sister wanted him to do it on his own. (Testimony of Respondent's social worker).
11. On ██████████, the Waiver Agency sent Appellant written notice of its decision to reduce Appellant's CLS from █ hours a week to █ hours per week, effective ██████████. (Exhibit A, page 3).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing regarding the reduction in CLS.¹

¹ MAHS originally identified Appellant's sister as the appellant in this case and the Department as the respondent. However, the identity of the parties was corrected in an ██████████ order.

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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Health and Human Services. Regional agencies, in this case A&D, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered through the waiver program include:

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)

Here, Appellant has been receiving CLS through the Waiver Agency and, with respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

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 DHS.

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.

*MPM, July 1, 2015 version
MI Choice Waiver Chapter, pages 14-15*

Here, the Waiver Agency determined that Appellant's CLS should be reduced from ██████ hours a week to ██████ hours per week. In support of that decision, its witnesses testified that that they based that reduction on a discussion with Appellant's care provider regarding how long each task covered by CLS took; a finding that Appellant's care provider was completing some tasks, such as meal preparation, for the benefit of Appellant, his care provider, and their mother at the same time; and a finding that some of the tasks that Appellant was authorized for assistance with, like cleaning his room, were not being performed by his care provider as the care provider wanted Appellant to do it on his own

In response, Appellant's sister/care provider testified that nothing has changed with respect to Appellant's needs or the care she provides him. She did acknowledge that she does try to have Appellant clean his room first on his own, but also testified that she will clean his room if he does not want to. Appellant's care provider further testified that she does prepare meals for herself, Appellant and their mother at the same time and that the reduction in services is not warranted as the meal preparation can take up to ██████ hours on a given day.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in reducing his services.

Given the record in this case, the undersigned Administrative Law Judge finds that Appellant has failed to meet that burden of proof and that the Respondent's decision must therefore be affirmed. The Waiver Agency's witnesses credibly testified as to the basis for the reduction, which included findings undisputed by Appellant's representative that some of the assistance covered by Appellant's CLS is being provided for the benefit of others or not being provided as an initial matter at all. Moreover, while Appellant's representative credibly testified that Appellant's needs have not changed, each assessment stands on its own and the sole example that Appellant's representative gave as to why the additional time is still needed, meal preparation for Appellant's entire family that can take up to six hours a day, is completely insufficient to meet Appellant's burden. Appellant and his representative's choice to have the provider prepare meals for the entire family together that may take an abnormal amount of time to prepare does not reflect a need for additional CLS or demonstrate any error by the Waiver Agency.

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 services.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to reduce Appellant's services is **AFFIRMED**.

Steven Kibit


Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [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.