



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 16-001387
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], caregiver, appeared as a witness for Petitioner. [REDACTED], Waiver Manager, represented the Department of Health and Human Services' Waiver Agency, The Senior Alliance ("Waiver Agency" or "TSA"). [REDACTED], Supports Coordinator, and [REDACTED], Supports Coordinator, appeared as witness for TSA.

During the hearing proceedings, the Waver Agency's Hearing Summary Packet was admitted as marked, Exhibits A-F.

ISSUE

Did the Waiver Agency properly deny Petitioner's request for an increase in 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. TSA 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. At the time of the [REDACTED], assessment, Petitioner was an [REDACTED] year old Medicaid beneficiary. (Exhibit A, p. 2)

3. Petitioner's health conditions include: osteoarthritis with low back pain, congestive heart failure, hypertension, peripheral vascular disease, depression, cataracts, glaucoma, macular degeneration, benign prostatic hyperplasia, blindness, and profound hearing loss. (Exhibit A, pp. 2 and 8-11)
4. Through the MI Choice Waiver program, Petitioner was receiving 56 hours per week of comprehensive community support services. Specifically, the hours were used 8 hours per day, 7 days per week, from 8:00 am to 4:00 pm. (Exhibit C, p. 2; Testimony of Supports Coordinator Rivard)
5. Petitioner requested an increase in services. Specifically, Petitioner requested assistance beyond 4:00 pm to assist with the evening meal and PM care - getting ready for bed. (Testimony of Supports Coordinator Rivard)
6. On [REDACTED], TSA completed an in-home visit and assessment. (Exhibit A)
7. TSA determined there were no significant changes in Petitioner's medical condition to warrant an increase in services. (Testimony of Supports Coordinator Rivard)
8. On [REDACTED], Petitioner requested an administrative hearing to contest the denial of additional hours. (Hearing Request)

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*, pp. 14-15 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.

In this case, Petitioner was receiving 56 hours per week of comprehensive community support services through the MI Choice Waiver program. Specifically, the hours were used 8 hours per day, 7 days per week, from 8:00 am to 4:00 pm. (Exhibit C, p. 2; Testimony of Supports Coordinator Rivard)

Petitioner requested an increase in services. Specifically, Petitioner requested assistance beyond 4:00 pm to assist with the evening meal and PM care- getting ready for bed. (Testimony of Supports Coordinator Rivard) Accordingly, on [REDACTED], TSA completed an in-home visit and assessment. (Exhibit A) It was reported that there were no falls within the last 90 days. (Exhibit A, p. 11) Petitioner's health conditions remained mostly the same from the last assessment in [REDACTED] including balance concerns. (Exhibit A, pp. 11-13 and Exhibit B, pp. 11-13) Petitioner's physical functioning also remained substantially the same from the last assessment in [REDACTED], (Exhibit A, pp. 15-18 and Exhibit B, pp. 15-18) TSA determined there were no significant changes in Petitioner's medical condition to warrant an increase in services. (Exhibits A and B; Testimony of Supports Coordinator Rivard) It was suggested that Petitioner split the currently authorized 8 hours to cover the times and services he requested the increase for. Petitioner responded that he did not want to do this

because he did not want to lose his current caregiver. (Testimony of Supports Coordinator Rivard)

Petitioner disagrees with the Waiver's Agency's determination to deny his request for an increase in hours. Petitioner provided detailed testimony describing his daily functioning. Petitioner also described a recent fall while getting ready for bed, and the hours he spent on the floor before he was able to unlock a storm door to that when he called for help they would be able to get in. Regarding splitting the current hours, Petitioner explained that it takes time to train caregivers; the current caregiver knows exactly how to do things; and other caregivers have just watched T.V. Petitioner trusts his current caregiver to help him with activities like getting out of the house. Petitioner does not want to lose this caregiver for the current 8 hour period. Petitioner just wants an extra 2 hours to help with the evening meal and getting ready for bed. (Petitioner Testimony)

Petitioner's caregiver testified that Petitioner probably should have as much care as possible. In the past year, Petitioner has steadily declined. Petitioner has confusion, spatial disorientation, and recent falls. (Testimony of Caregiver)

Overall, Petitioner has failed to meet his burden of showing by a preponderance of the evidence that the Waiver Agency improperly denied his request for an increase in service hours. The Waiver Agency completed an assessment on [REDACTED], which did not show any significant changes in Petitioner's medical condition to warrant an increase in services. (Exhibits A and B; Testimony of Supports Coordinator Rivard) Further, it was not established that Petitioner's needs for assistance could not be met by splitting the current approval for 8 hours daily to allow for some coverage in the evening, for example, 6 hours in the morning and afternoon then 2 hours in the evening. While this ALJ understands Petitioner's concerns regarding not losing his current caregiver, there was no evidence that the homecare agency has even been contacted about a potential change Petitioner's use of his approved hours to know whether this might result in any changes with his caregiver. While Petitioner testified about a recent fall, this information was not available to the Waiver Agency when this assessment was completed. Rather, at the time of the [REDACTED] assessment, it was reported that Petitioner had not had any falls within the last 90 days. Further, Petitioner's health conditions and physical functioning remained mostly the same from the last assessment in [REDACTED] (Exhibit A, pp. 11-13 and 15-18, Exhibit B, pp. 11-13 and 15-18) The determination to deny Petitioner's request for an increase in services is upheld based on the information available at that time.

Petitioner should always update the Waiver Agency with any changes in his condition and/or physical functioning for consideration regarding his ongoing services authorization.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Petitioner's request for an increase in services based on the information available at that time.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

CL/cg



Colleen Lack

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]