



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 27, 2016
MAHS Docket No.: 16-006540
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 5, 2016. [REDACTED], a friend, appeared and testified on Petitioner's behalf. Petitioner also testified on her own behalf. [REDACTED], Hearings Coordinator, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, the [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [REDACTED] [REDACTED], registered nurse, and [REDACTED] [REDACTED], supervisor, also testified as witnesses for Respondent.

ISSUE

Did the Respondent properly reduce Petitioner's services through the MI Choice Waiver Program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole:

1. Respondent 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. Petitioner is a Medicaid beneficiary who has been diagnosed with hypertension, hyperlipidemia esophagitis reflux and polycythemia, and who has been approved for Community Living Supports (CLS) through Respondent. (Exhibit A, pages 12, 14).

3. On January 11, 2016, Petitioner returned home from a hospital, where she had been admitted because of clostridium difficile. (Exhibit A, pages 10, 22).
4. On January 19, 2016, Respondent conducted a review of Petitioner's needs and services with Petitioner. (Exhibit A, page 7).
5. Following that review, Respondent authorized 15 hours per week of CLS for Petitioner. (Exhibit A, pages 12, 14).
6. On April 21, 2016, Respondent conducted a routine reassessment of Petitioner's needs and services with Petitioner. (Exhibit A, pages 7-22).
7. During that assessment, Respondent noted physical function improvements for Petitioner in the areas of meal preparation, shopping, transferring, locomotion, dressing, toileting and bathing. (Exhibit A, pages 17-19).
8. Based on the Petitioner's improvements in self-care and self-sufficiency, Respondent decided to reduce Petitioner's CLS to 10 hours per week. (Exhibit A, page 20).
9. On April 21, 2016, Respondent sent Petitioner advance written notice that her CLS would be reduced to 10 hours per week on May 3, 2016. (Exhibit A, pages 23-24).
10. On May 24, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter regarding the decision to reduce her services. (Exhibit A, page 3).

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.

Petitioner is receiving 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 to the Michigan Department of Health and Human Services. Regional agencies, in this case Respondent, 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, Petitioner 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, April 1, 2016 version
MI Choice Waiver Chapter, pages 14-15*

As discussed above, Respondent decided to reduce Petitioner's CLS from 15 hours per week to 10 hours per week.

In support of that decision, [REDACTED] testified that she completed the assessment in January and the assessment in April, and that she found that Petitioner has improved in a number of areas between those two assessments. She also noted that the most recent assessment of Petitioner was on a "good" day for Petitioner, but that a reduction was still warranted given Petitioner's improvement and the lack of medical necessity for 15 hours of CLS per week.

In response, Petitioner's representative testified that, while she is not Petitioner's CLS worker, she was previously assisting Petitioner once a week, with Petitioner paying her out-of-pocket, and that she now needs to assist Petitioner twice a week due to the reduction in CLS. Petitioner's representative also testified that Petitioner needs more time so that Petitioner can have at least one day where she is receiving six hours of CLS and can go to a swimming pool for exercise or a grocery store.

Petitioner also testified that she has good days and bad days with her health, and that the most recent assessment was completed on a good day. She further testified that she needs more time so that she can have at least one day where she is receiving six hours of CLS and can go shopping at particular stores, which are further away from others but have cheaper prices. In addition to shopping, Petitioner testified that she needs assistance with homemaking and attending doctor's appointments. She did note that she is able to transfer and dress on her own, and that she can bathe on her own so long as someone is in the house in case Petitioner falls.

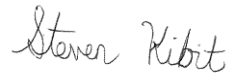
Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in reducing her services. Give the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof and that Respondent's decision must therefore be affirmed. The reduction was based on Petitioner's improvement in physical functioning and such improvement is not disputed. Petitioner also identified few areas of need inside her home and, instead, Petitioner and her representative only appear to identify a need for more hours because of a logistical issue in driving long distances. However, that concern could be addressed by how Petitioner allocates her hours and she failed to show a medical necessity for more assistance or that Respondent erred in reducing her services given her improvement.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly reduced Petitioner's services.

IT IS THEREFORE ORDERED that

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



SK/db

Steven Kibit
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]
[REDACTED]
[REDACTED] [REDACTED]

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