



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 14, 2016
MAHS Docket No.: 16-008281
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 August 18, 2016. The Petitioner was represented by [REDACTED], Attorney. [REDACTED], the Petitioner, and [REDACTED], son, were present. [REDACTED], Long Term Care Program Director, represented the Department of Health and Human Services' Waiver Agency, [REDACTED] ("Waiver Agency" or "[REDACTED]"). [REDACTED], Social Work Care Manager, appeared as a witness for [REDACTED].

During the hearing proceedings, the Waiver Agency's Hearing Summary packet was admitted as Exhibit A, as marked with attachments 1-4.

ISSUE

Did the Waiver Agency properly propose a reduction of Petitioner's services though 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. Petitioner entered into the MI Choice program in May 2011. [REDACTED] (Hearing Summary)
2. Petitioner's primary diagnosis is Parkinson's disease with severe tremors and a history of anxiety and depression. ([REDACTED] Hearing Summary)
3. Petitioner receives Community Living Supports (CLS) services and [REDACTED] provides the staff for the CLS services.

4. Petitioner was authorized for a second aide to assist with bathing following a June 26, 2015, request from [REDACTED] because an aide had a mild back injury that occurred while trying to provide care. [REDACTED] Hearing Summary and Exhibit A, attachment 1, p. 20 of 53)
5. On June 15, 2016, [REDACTED] called [REDACTED] requesting a reduction in aide services for bath days because the need for two aides is rare. It was reported that only one aide is utilized leaving the other aide without anything to do. (Exhibit A, attachment 1, p. 3 of 53)
6. On June 16, 2016, [REDACTED] called Petitioner regarding the request to reduce the CLS services to only one aide for bathing. Alternative options, such as using a shower bench and allowing the one aide to be more actively involved in the showering process were discussed to address Petitioner's concerns that he does not always feel steady. Petitioner indicated he was willing to try this. (Exhibit A, attachment 1, p. 3 of 53)
7. On June 16, 2016, a Reduction/Suspension of Waiver Services or Case Closure notice was issued to Petitioner stating the [REDACTED] aide will be reduced to one aide on shower days and the effective date of the change would be 12 days from the date of the notice. (Exhibit A, attachment 2, pp. 1-2)
8. On June 28, 2016, the Michigan Administrative Hearing System received Petitioner's Request for Hearing. (Exhibit A, attachment 3, p. 2)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

Petitioner is seeking 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 UPCAP, 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)

The Medicaid Provider Manual addresses CLS through the MI Choice Waiver Program:

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,
April 1, 2016, pp. 14-15.

On June 16, 2016, a Reduction/Suspension of Waiver Services or Case Closure notice was issued to Petitioner stating the [REDACTED] aide will be reduced to one aide on shower days and the effective date of the change would be 12 days from the date of the notice. (Exhibit A, attachment 2, pp. 1-2) It is noted that Petitioner was authorized for a second aide to assist with bathing following a June 26, 2015, request from [REDACTED] because an aide had a mild back injury that occurred while trying to provide care. ([REDACTED] Hearing Summary and Exhibit A, attachment 1, p. 20 of 53)

The Waiver Agency explained the basis for the determination to reduce Petitioner's CLS services. In part, the history of Petitioner's issues with aides was described. ([REDACTED] Hearing Summary; Exhibit A, attachment 1, pp. 1-53 of 53; Long Term Care Program Director Testimony) Further, on June 15, 2016, [REDACTED] called [REDACTED] requesting a reduction in aide services for bath days because the need for two aides is rare. It was reported that only one aide is utilized leaving the other aide without anything to do. (Exhibit A, attachment 1, p. 3 of 53) On June 16, 2016, [REDACTED] called Petitioner regarding the request to reduce the CLS services to only one aide for bathing. Alternative options, such as using a shower bench and allowing the one aide to be more actively involved in the showering process were discussed to address Petitioner's concerns that he does not always feel steady. Petitioner indicated he was willing to try this. (Exhibit A, attachment 1, p. 3 of 53) Accordingly, the Waiver Agency noted that Petitioner had agreed to the June 16, 2016, determination to try reducing the CLS services to one aid for bathing.

The Waiver Agency also noted that subsequently arrangements were made to get Petitioner a shower chair. (Exhibit A, attachment 1, pp. 2-3 of 53) Additionally, when the Waiver Agency was notified of Petitioner's hearing request, they reinstated the authorization for a second aide for showering. (Exhibit A, attachment 1, p. 2 of 53; Long Term Care Program Director Testimony)

Petitioner's attorney indicated there were still concerns with Petitioner actually receiving the services authorized. The Waiver Agency explained that the services have been authorized, however, there is a staffing shortage issue overall in [REDACTED]. [REDACTED] is continuing staff recruitment efforts. The Waiver Agency has contacted another contractor, however, they are also short on staff and did not have staff available to provide services to Petitioner at that time. Petitioner has also been given the option of self-determination participation in the MI Choice Waiver program, but Petitioner has not wanted to pursue that option thus far. (Long Term Care Program Director Testimony; Social Work Care Manager Testimony)

Petitioner bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in proposing the reduction to his services. Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof. At the time of the case action, Petitioner agreed to try the reduced services of only one aide for showering. Accordingly, the June 16, 2016 case action was appropriate. Further, when the Waiver Agency was notified that Petitioner no longer agreed to have one aide for showering, the authorization for a second aide for showering was reinstated.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly proposed a reduction of Petitioner's services through the MI Choice Waiver program based on the information available at that time and notes that the authorization for a second aide for showering has since been reinstated.

IT IS THEREFORE ORDERED that

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

CL/sb



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]

[REDACTED]

[REDACTED]

[REDACTED]

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