



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: October 20, 2016  
MAHS Docket No.: 16-011336  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

### **DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on October 13, 2016. Petitioner [REDACTED] did not appear. Caregiver [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Care Management director; [REDACTED], Care Management Nurse; [REDACTED], Social Worker and [REDACTED], Care Manager Supervisor represented the Department of Health and Human Services (Department or Respondent).

### **ISSUE**

Did the Department properly reduce Petitioner's Community Living supports (CLS) hours?

### **FINDINGS OF FACT**

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

1. In September 2015, Petitioner had difficulty with bed mobility she was non-ambulatory, was receiving physical therapy and attending a wound clinic.
2. Petitioner had been living in a nursing home for about 75 days and was recently discharged home and enrolled in the MI Choice HCBS program.
3. The Care Manager determined that Petitioner's physical condition has improved. Petitioner was walking with a walker or using a wheelchair to move about inside her home; she was sleeping on a regular bed and no longer using a regular bed.

4. On August 1, 2016, the Department sent Petitioner an Advance Negative Action Notice stating that her care services would be reduced from seven Community Living Supports (CLS) hours per day seven days per week to three hours per day seven days per week because of her improved condition.
5. On August 13, 2016, the Michigan Administrative Hearings System received a Request for Hearing to contest the reduction of services.

### **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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

This Petitioner 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 Community Health (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)*

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, which provides in part:

## **SECTION 1 – GENERAL INFORMATION**

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

\* \* \*

## **SECTION 2 - ELIGIBILITY**

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility

requirements on an ongoing basis to remain enrolled in the program. (p.1, emphasis added).

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See *42 CFR 440.230*.

Medicaid's MI Choice home and community based waiver program has provided services and supports to elderly and disabled people since 1992. (Medical Services Administration Bulletin MSA 11-27)

Medical Services Bulletin MSA 14-26 (July 1, 2014) provides supports coordination to assure the provision of supports and services required to meet the participant's health and welfare needs in the home and community based services. Without these supports and services, the participant would otherwise require institutionalization.

The program provides CLS to facilitate an individual's independence and promote participation in the community. CLC can be provided in the participant's residence or in community settings. CLS supports include assistance to enable participants to accomplish tasks that they would normally do for themselves if able. CL cannot be provided in circumstances where they would be a duplication of services available under the State Plan or elsewhere.

In the instant case, Petitioner is in shared living with her elderly mother who also receives Waiver services. Petitioner's mother gets seven days per week services through the MI choice Waiver. Her services were increased, but Petitioner's services were decreased. Petitioner prepares her own meals and can walk with her walker or use her wheelchair because she needs to stay off of her foot. Petitioner's mother receives eight hours of CLS services seven days per week. Because there is a shared household Petitioner and her mother receive prorated services for laundry, cleaning and meal preparation.

Under the circumstances, this Administrative Law Judge finds that the Respondent has established by the necessary competent, substantial and material evidence on the record that it was in compliance with Department policy, rules and regulations when it reduced Petitioner's CLS based upon Petitioner's improved functioning and program rules.

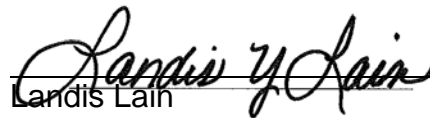
**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Respondent properly reduced CLS services under the circumstances.

**IT IS, THEREFORE, ORDERED** that:

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

LL/sb



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Landis Lain  
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]

**Authorized Hearing Rep.**

[REDACTED]