



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: January 12, 2017  
MAHS Docket No.: 16-015842  
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 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 3, 2016. At Petitioner's request on the record, [REDACTED], Petitioner's son, appeared and testified on Petitioner's behalf. Petitioner was also present for the hearing. [REDACTED], Assistant Director of [REDACTED] and [REDACTED], appeared and testified on behalf of the Respondent Area Agency on Aging 1-B. [REDACTED], also testified as witnesses for Respondent.

**ISSUE**

Did Respondent properly reduce Petitioner'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. 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. Prior to the reduction at issue in this case, Petitioner was receiving 33 hours per week of personal care/homemaking services through Respondent. (Testimony of Petitioner's representative; Testimony of Supports Coordinator).

3. Petitioner's service provider would assist Petitioner 6 days a week. (Testimony of Supports Coordinator).
4. On September 28, 2016, during a routine service call, Petitioner expressed concerns about her then-service provider and reported that the worker does not do anything for at least an hour a day. (Exhibit A, page 9 of Progress Notes Report; Testimony of Supports Coordinator).
5. In response, Petitioner's supports coordinator discussed Petitioner's concerns with Petitioner's service provider. (Exhibit A, page 8 of Progress Notes Report; Testimony of Supports Coordinator).
6. The service provider indicated that all of the authorized tasks were being completed in the allotted time, but that Petitioner also wanted the provider to complete tasks not identified in the plan of service. (Exhibit A, page 8 of Progress Notes Report; Testimony of Supports Coordinator).
7. Petitioner's supports coordinator and Petitioner began working on switching Petitioner to a new service provider. (Exhibit A, pages 7-9 of Progress Notes Report; Testimony of Supports Coordinator).
8. On September 30, 2016, Respondent sent Petitioner written notice that, in twelve days, her services would be reduced by 6 hours per week. (Exhibit A).
9. The reduction was implemented. (Testimony of Supports Coordinator).
10. Petitioner also subsequently switched service providers. (Testimony of Petitioner's representative).
11. The new service provider has been working 27 hours per week and is providing all necessary services within that amount of time. (Testimony of Petitioner's representative).

### **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.

Petitioner 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 Community Health (Department). 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, Skilled Nursing Facility, Intermediate Care Facility, or Intermediate Care Facility/Mentally Retarded, and is reimbursable under the State Plan.

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 personal care/homemaking services, otherwise known as Community Living Supports (CLS), through Respondent 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 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.

*MPM, July 1, 2016 version  
MI Choice Waiver Chapter, pages 14-15*

Here, as described above, Respondent reduced Petitioner's services from 33 hours to 27 hours per week on the basis that the additional hours were not medically necessary.

In support of that decision, the Supports Coordinator testified that Petitioner was receiving services 6 days a week, but reported that her worker was not doing anything for at least an hour each day while the provider also indicated that all of the authorized tasks were being completed.

In response, Petitioner's representative testified that he and Petitioner had difficulties with her past service provider, whose workers had an attitude; chose not to work; and refused to assist Petitioner with certain tasks. Petitioner's representative also testified that one worker reported that she would only take orders from Respondent while another abused Petitioner, though the abuse was not reported to the police. Petitioner's representative further testified that the situation is much better with Petitioner's current service provider, who Petitioner has had for a couple of months and whose workers are able to complete all the necessary work in the reduced amount of time now authorized by Respondent, but that it would be nice to have the 33 hours per week of services back.

Petitioner bears the burden of providing by a preponderance of the evidence that Respondent erred in reducing her services.

Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof. Petitioner's representative's testimony appears to be more of a complaint about the conduct and attitude of past workers, as opposed to a claim that the additional service hours were medically necessary, and the fact that the workers may not have been doing their job properly does not demonstrate that the reduction was improper. Moreover, events since the reduction was implemented have only confirmed that the additional hours are not necessary as even Petitioner's representative agreed that Petitioner's new worker is able to complete all necessary work in the 27 hours per week of services now authorized by Respondent. The additional hours may have been nice, but Petitioner has failed to show that they are medically necessary or that Respondent erred in removing them, and Respondent's decision must therefore be affirmed.

## 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**.

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**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**

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