



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]  
[REDACTED]

Date Mailed: March 29, 2017  
MAHS Docket No.: 16-018131  
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, and an adjournment granted at Petitioner's request, a telephone hearing was held on March 15, 2017. Petitioner appeared and testified on his own behalf. [REDACTED] of [REDACTED] represented the Respondent [REDACTED], [REDACTED], [REDACTED] Coordinator, testified as a witness for Respondent. [REDACTED], was also present during the hearing for Respondent.

During the hearing, Petitioner presented one exhibit that was entered into the record:

Exhibit 1: Request for Hearing

Respondent offered five exhibits that were entered into the record:

- Exhibit A: Progress Notes for December 21, 2016
- Exhibit B: Progress Notes for September 21, 2016 to December 9, 2016
- Exhibit C: Notice of Denial
- Exhibit D: Assessment Report dated October 25, 2016
- Exhibit E: Assessment Report dated March 1, 2016

**ISSUE**

Did Respondent properly deny Petitioner's request for additional 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. Petitioner is a fifty-seven-year-old Medicaid beneficiary who has been diagnosed with chronic obstructive pulmonary disease; arthritis; anxiety; depression; a stroke; hemiplegia; seizure disorder; and a transient ischemic attack. (Exhibit E, pages 1, 8).
3. In 2014, Petitioner was approved for MI Choice waiver services through another agency while living in [REDACTED]. (Testimony of Petitioner).
4. At that time, Petitioner was approved for 42 hours per week of Community Living Supports (CLS). (Testimony of Petitioner).
5. In 2016, Petitioner moved to [REDACTED], and was approved for 34 hours per week of CLS through Respondent. (Testimony of Petitioner).
6. Petitioner was also approved for home delivered meals and nursing services. (Exhibit B, page 3).
7. On March 1, 2016, Petitioner's support coordinator at the time performed a routine reassessment of Petitioner's needs and services. (Exhibit E, pages 1-16).
8. During that assessment, the supports coordinator found that Petitioner was independent in phone use, eating and locomotion, but required limited assistance with meal preparation, shopping, transportation, transferring; toileting, locomotion, dressing and personal hygiene; extensive assistance with managing medications; and was totally dependent on others for housework, managing finances, and using stairs. (Exhibit E, pages 11-12).
9. On October 25, 2016, [REDACTED], [REDACTED], conducted a routine reassessment of Petitioner's needs and services with Petitioner in his home. (Exhibit D, pages 1-13).
10. During that assessment, [REDACTED] found that Petitioner was independent in phone use, eating and locomotion, but required limited assistance with

meal preparation, shopping, transportation, dressing and personal hygiene; extensive assistance with managing medications, transferring, toileting, and bathing; and was totally dependent on others for housework, managing finances, and using stairs. (Exhibit D, pages 9-10).

11. At that time, Petitioner also requested that his CLS hours be increased by 1 hours per day, for a total of 41 hours per week. (Testimony of Petitioner; Testimony of [REDACTED])
12. Respondent reviewed that request and determined that it should be denied as CLS was sufficiently authorized for assistance with shopping, 60 minutes per day, 2 days a week; a.m. care, including bed bath, skin care, personal care and blood sugar checks, 90 minutes per day, 7 days a week; p.m. care, including skin care, personal care, and blood sugar checks, 60 minutes per day, 7 days per week; meal set and preparation, 50 minutes per day, 7 days per week; incontinence care, 40 minutes per day, 7 days per week; homemaking, 60 minutes per day, 3 days per week; and laundry, 60 minutes per day, 1 day per week. (Exhibit B, page 4; Testimony of [REDACTED])
13. On November 2, 2016, Respondent sent Petitioner written notice that his request for an increase to 41 hours per week of CLS was denied. (Exhibit C, pages 1-2).
14. The reason for the denial given in the notice was that the assessment did not support the need for additional services. (Exhibit C, page 1).
15. On December 9, 2016, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Petitioner with respect to that denial. (Exhibit 1, pages 1-2).

### **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, 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 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, October 1, 2016 version  
MI Choice Waiver Chapter, pages 14-15*

In this case, as described above, Respondent denied Petitioner's request for an increase to 41 hours of CLS per week and, instead, continued to approve 31 hours per week of such services.

In support of that decision, [REDACTED] Petitioner's [REDACTED], testified that the request was denied because she did not see any changes in Petitioner's circumstances or unmet needs. She also went through exactly what was approved for Petitioner. She further testified that Petitioner did not identify any specific reason for requesting more time other than he did not think enough time had been approved.

In response, Petitioner testified that he was previously receiving 42 hours per week of CLS when he was approved for waiver services through another agency and that, while Respondent only approved 34 hours per week when he moved and switched over to it, he was also told that the hours could be increased if necessary. Petitioner also testified that his aides are much better through Respondent, but that he needs the hours back and that he has continually been requesting them. Petitioner further testified that his aides are not paid enough for all that they do and that the formula Respondent uses for approving hours is not right. In particular, Petitioner noted that he would need more hours if he got sick or there was an emergency.

Petitioner bears the burden of providing by a preponderance of the evidence that Respondent erred in denying his request for additional services.

Given 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.

Petitioner primarily argues that his request should have been approved because he was previously approved for more hours through another agency and his workers are not being paid enough. However, what Petitioner previously received through another agency is not material here, especially as there is no documentation or explanation regarding that authorization in the record, and Respondent has continuously authorized 34 hours per week of CLS. Similarly, while Petitioner's desire that his workers be paid

more is commendable, their pay rate does not affect the number of hours that should be approved.

With respect to Petitioner's need for services, there are slight difference between the findings of the two assessments in the record, but Petitioner has failed to identify any specific or significant changes that would warrant an increase in hours. He likewise failed to identify any specific needs that were unmet and, instead, just broadly and unpersuasively asserted that he needs more time. However, while additional CLS hours may be beneficial, Petitioner has failed to show that they are medically necessary or that Respondent erred in denying them. Moreover, to the extent Petitioner gets sick or his circumstances change, he can always request additional services if and when they become necessary.

Accordingly, for the reasons discussed above, Petitioner has failed to meet his burden of proof 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 denied Petitioner's request for additional services.

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

- 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**

[REDACTED]  
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