

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: July 7, 2020
MOAHR Docket No.: 20-002427
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on June 3, 2020. [REDACTED], wife and Authorized Hearing Representative (AHR), represented the Petitioner. [REDACTED] [REDACTED], Assistant, appeared as a witness for Petitioner. John Grib, Liaison, represented the Respondent Department of Health and Human Services' Waiver Agency, Senior Services, Inc. ("Waiver Agency"). Corinne Bradley, Director of Quality and Corporate Compliance Officer; Amy Fialkoff, Waiver Program Supervisor; and Maronda Robbson, Support Coordinator (SC), appeared as witnesses for Respondent.

During the hearing proceeding, Respondent's Hearing Summary packet was admitted as Exhibit A, pp. 1-8 and Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-15.

ISSUE

Did the Waiver Agency properly reduce Petitioner's Community Living Supports (CLS) hours through 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 is Medicaid beneficiary and an ongoing recipient of services through the MI Choice Waiver program.
2. Petitioner was receiving 80 hours of CLS services per week. (Exhibit A, p. 1)

3. On March 4, 2020, the Waiver Agency SC and Registered Nurse (RN) met with Petitioner and his wife to review the care plan and service levels. The Waiver Agency applied a new home care allocation tool. The Waiver Agency understood that Petitioner's wife was no longer working outside the home. The Waiver Agency indicated Petitioner's wife could therefore provide some additional supports for Petitioner that she was previously unable to do because of her work. (Exhibit A, pp. 1-2)
4. The Waiver Agency determined that Petitioner's CLS hours could be reduced to 45.5 hours per week. (Exhibit A, p. 1-2)
5. On March 12, 2020, the Waiver Agency sent Petitioner written notice of the CLS reduction. (Exhibit A, pp. 1-2)
6. Petitioner requested an Internal Appeal.
7. On April 1, 2020, the Internal Appeal Committee met and determined the reduction to Petitioner's CLS hours would be upheld based on Petitioner's wife's ability to assist with Petitioner's care since the change in her employment. (Exhibit A, pp. 1-2 and 5)
8. On April 1, 2020, the Waiver Agency sent Petitioner written notice of the Internal Appeal determination. (Exhibit A, p. 5)
9. On April 20, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's hearing request. (Hearing Request)

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 the 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/IID (Intermediate Care Facility for Individuals with Intellectual Disabilities) and is reimbursable under the State Plan. See 42 CFR 430.25(c)(2).

The Waiver Agency cited the Medicaid Provider Manual (MPM) addressing person centered planning:

6.1 PERSON-CENTERED PLANNING

Person-centered planning (PCP) is a process for planning and supporting a participant receiving services that builds on the participant’s desire to engage in lawful activities that promote community life and that honor the participant’s preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the participant desires or requires. Waiver agencies and direct service providers must utilize a PCP process, informing the participant of service options in ways that are meaningful. This includes assessing the needs and desires of the participant, developing service and support plans, and continuously updating and revising those plans as needs and desires change. The participant and their chosen representative(s) must be provided with written information from the waiver agency detailing the right to participate in the PCP process. Waiver agencies and direct service providers implement PCP in accordance with the MDHHS Person-Centered Planning Guideline document that is an attachment to the waiver agency provider contract.

PCP meetings are conducted when the participant is not in crisis and at a time of the participant’s choice. The participant has authority to determine who will be involved in the PCP process as well as a time and location that meets the needs of all individuals involved in the process. An

interim plan of service may be developed by the supports coordinator when the participant is experiencing a crisis situation that requires immediate services and the participant is not ready to fully participate in PCP. Interim care plans are authorized for no more than 30 days without a follow-up visit (or planning meeting) to determine the participant's status.

MPM, MI Choice Waiver Chapter
January 1, 2020, p. 28
(Underline added)

The MPM also references the use of Minimum Operating Standards maintained and published by MDHHS, see MPM, January 1, 2020 version, MI Choice Waiver Chapter, page 26. In support of their determination in the case, the Waiver Agency cited Attachment K of those operating standards, specifically:

4. Decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, must be made by a health care professional who has appropriate clinical expertise in treating the participant's condition or disease. For MI Choice services, supports coordinators or the supervisor of a supports coordination would have this clinical experience.

*Minimum Operating Standards for MI Choice Waiver Program Services
Attachment K, FY 2020, page 43*

D. INVOLVEMENT OF ALLIES

SCs work with participants to engage a team or family, friends, professionals, supports brokers, caregiver staff, and other allies to assist in the development of plans of service and to strengthen the skills of participants to address planned activities. Generally, MI Choice services are not used to replace existing unpaid supports, but rather bolster and help sustain ongoing allies' involvement.

E. USE OF OTHER PAID SERVICES

Before authorizing MI Choice services for a participant, the waiver agency must take full advantage of services and supports in the community that are available to the participant and paid for by other fund sources, including third

party reimbursements and the Medicaid State Plan services. MI Choice funding is the payment source of last resort in most circumstances.

*Minimum Operating Standards for MI Choice Waiver Program Services
Attachment K, FY 2020, page 8
(Underline added)*

In this case, the contested action is the Waiver Agency's determination to reduce CLS services for Petitioner. The Waiver Agency understood that Petitioner's wife recently stopped working outside the home. Therefore, 80 hours of CLS would no longer be medically necessary because Petitioner's wife would be able to provide more assistance for Petitioner. Petitioner's CLS hours were reduced from 80 hours per week to 45.5 hours per week. The primary and secondary SCs involved in this case in March 2020 are no longer with the Waiver Agency and could not provide testimony. (Exhibit A, pp. 1-2 and 5; Liaison Testimony)

However, Petitioner's wife and her assistant testified that Petitioner has not worked since she retired in 2017. Further, Petitioner's wife has several medical conditions and is in need of assistance herself. Documentation of Petitioner's wife's medical conditions was provided for this hearing. It was noted that the documentation of her medical conditions was previously provided to the Waiver Agency on January 28, 2020, when a request for assistance and services for Petitioner's wife was pending. The Waiver Agency told the assistant they put the documentation in Petitioner's wife's file on February 5, 2020. (Wife and Assistant Testimony; Exhibit 1, pp. 3-15)

Petitioner bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in their determination to reduce the CLS services. Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has met that burden of proof. Overall, it appears there was a misunderstanding regarding Petitioner's wife's work status. A new tool was utilized during the March 4, 2020, assessment. (Exhibit A, p. 2) Possibly, Petitioner's wife's work status was documented as new information or in a new way, giving an inaccurate impression that she recently stopped working outside the home. Further, it does not appear that the Waiver Agency considered Petitioner's wife's ability to care for her husband when they reduced Petitioner's CLS authorization. Perhaps this was due to the misunderstanding regarding Petitioner's wife recently working. Further, it was explained that the medical records for Petitioner's wife previously submitted to the Waiver Agency were in the file for her referral for the MI Choice Waiver program, not in Petitioner's file. (SC and Director of Quality and Corporate Compliance Officer Testimony) However, the Waiver Agency should have assessed Petitioner's wife's current ability to care for Petitioner before reducing the CLS hours and implying she would now be able to provide more assistance for Petitioner because she does not work outside the home. Accordingly, the Waiver Agency's determination to reduce Petitioner's CLS hours is reversed based on the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly reduced Petitioner's Community Living Supports (CLS) hours through the MI Choice Waiver program based on the available information.

IT IS THEREFORE ORDERED that:

The Waiver Agency's determination is **REVERSED**. If they have not already done so, the Waiver Agency shall initiate re-assessing Petitioner for CLS services with the CLS authorization returning to the previously authorized amount while the re-assessment is pending.



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

CL/dh

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Heather Hill
CCC 5th Floor
Lansing, MI 48909

DHHS -Dept Contact

Brian Barrie
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Lansing, MI 48919

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Elizabeth Gallagher
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Authorized Hearing Rep.

[REDACTED]
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[REDACTED] MI [REDACTED]

Authorized Hearing Rep.

[REDACTED]
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Community Health Rep

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Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]