

[REDACTED]
MI
[REDACTED]

Date Mailed: July 11, 2022
MOAHR Docket No.: 22-002263
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on June 29, 2022. Petitioner appeared on her own behalf and offered testimony along with her brother, [REDACTED]. Darryl Washington, Director, appeared on behalf of Northern Health Care Management (Respondent). Casey McCotter and Kayla Konen appeared and testified for Respondent.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Waiver Agency properly reduce Petitioner's Community Living Supports (CLS)?

FINDINGS OF FACT

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

1. The Department contracts with Northern Health Care Management to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A; Testimony)
2. Northern Health Care Management must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Exhibit A; Testimony)
3. Petitioner is a [REDACTED]-year-old Medicaid beneficiary. Petitioner is diagnosed

with COPD, arthritis, hypertension, osteoporosis, anxiety, depression, diabetes, fibromyalgia, and chronic kidney disease. (Exhibit A, p 9; Testimony)

4. Petitioner lives with her husband in a single-family home. Petitioner's brother, [REDACTED], is her caregiver and lives nearby. (Exhibit A, p 3; Testimony)
5. Petitioner is independent for all of her Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) needs. (Exhibit A, p 22; Testimony)
6. Petitioner was receiving 5 hours daily of CLS and 200 miles monthly for mileage. (Exhibit A, p 16)
7. On March 28, 2022, the Waiver Agency's R.N., Supports Coordinator and Social Worker Supports Coordinator conducted an assessment during which they interviewed Petitioner. During the assessment, Petitioner requested an increase in hours. (Exhibit A, p 25)
8. On April 8, 2022, following the assessment, the Waiver Agency determined that Petitioner's CLS hours would be reduced to 2 units per day based on Petitioner's current needs. (Exhibit A, pp 2-19, 24 Testimony)
9. In determining the amount of CLS hours Petitioner was entitled to, the Waiver Agency's R.N. and Supports Coordinator considered Petitioner's individual needs and allotted a reasonable amount of time for each task. Specifically, the Waiver Agency's R.N. and Supports Coordinator allocated 2 hours per day for meal preparation, housework and transportation. (Exhibit A, p 16; Testimony)
10. On April 8, 2022, the Waiver Agency sent Petitioner an Advance Action Notice informing her that her CLS hours would be reduced. (Exhibit A, p 1; Testimony)
11. On April 18, 2022, Petitioner requested a hearing disputing the reduction of CLS hours.

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.

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).

Home and community-based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. 42 CFR 440.180(a).

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).

With regard to Community Living Supports, the Medicaid Provider Manual provides in pertinent part:

4.1.D. 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 includes 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
July 1, 2021, pp 23-25*

The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. 42 CFR 440.230. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

Petitioner bears the burden of proving, by a preponderance of evidence, that 2 CLS hours per day are insufficient.

The Waiver Agency's witness testified that following a March 28, 2022, assessment, during which they interviewed Petitioner, the Waiver Agency determined that Petitioner's CLS hours would be reduced based on Petitioner's current needs for assistance. Petitioner is occasionally using the public bus system for transportation approximately once a week. Petitioner testified that she uses the bus approximately once a week to feel independent but that her circumstances have not changed. Petitioner testified that she often has bad days after taking the bus and being more active and she is able to do less.

Petitioner's brother, [REDACTED], testified about the assistance that he provides to Petitioner, specifically that he has to help her up from bed occasionally.

Based on the above findings of fact and conclusions of law, this Administrative Law Judge (ALJ) finds that the Waiver Agency properly reduced Petitioner's CLS hours based upon the information that was provided to them at the time of the assessment. The allocation of 2 hours a day is reasonable and appropriate based on Petitioner's needs. Of course, if Petitioner's condition has worsened since the assessment, she can always request another review of her CLS hours. However, this administrative law judge must base his decision on the information available to the Waiver Agency at the time the decision to reduce the CLS hours was made. Based on that information, the reduction was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly reduced Petitioner's CLS hours.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



AM/dh

Aaron McClintic
Administrative Law Judge

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

Via Electronic Delivery:

DHHS Department Rep.
Heather Hill
400 S. Pine, 5th Floor
Lansing, MI 48933
HillH3@michigan.gov

DHHS Department Contact
Elizabeth Gallagher
400 S. Pine, 5th Floor
Lansing, MI 48909
GallagherE@michigan.gov

Community Health Rep.
Darryl A Washington, Ed.D.
c/o Northern Health Care Management
105 Hall St., Suite D
Traverse City, MI 49684
darryl.washington@nlcmh.org

Via First Class Mail:



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