



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
DIRECTOR



Date Mailed: September 5, 2024  
MOAHR Docket No.: 24-007870  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

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

After due notice, a telephone hearing was held on September 3, 2024. [REDACTED] Petitioner, appeared on his own behalf. [REDACTED] Petitioner's Caregiver, appeared as a witness. Gail Wejrowski, Waiver Manager, appeared on behalf of Respondent, The Senior Alliance (Department). Brooke Cartmille, Supports Coordinator; and Tara Murphy, Services Manager, appeared as witnesses for the Department.

Exhibits:

- |            |    |                                 |
|------------|----|---------------------------------|
| Petitioner | 1. | August 21, 2024, Medical Record |
| Department | A. | Hearing Summary                 |

**ISSUE**

Did Department 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. Petitioner is a Medicaid beneficiary who receives CLS through Department. (Exhibit A; Testimony.)

2. Prior to May 14, 2024, Petitioner was approved for a Personal Emergency Response System (PERS) with monthly monitoring, home delivered meals daily 7 days a week, 62 cans of monthly of liquid nutrition, 6 hours daily of CLS to assist with dressing, bathing/shower, hair care, range of motion, toileting, transfers, light housekeeping, laundry, and meal preparation. The 6 hours of CLS were scheduled for 2 shifts a day at 3 hours per shift for a total of 42 hours weekly. Petitioner also received skilled nursing services 3 days a week under his Medicare insurance. (Exhibit A; Testimony.)
3. On May 14, 2024, Petitioner participated in an assessment conducted by the Department. During the assessment, Petitioner reported to be independent with managing his finances, managing his medications, using the phone, completing bed mobility, dressing his lower and upper body, feeding himself, transferring on and off the toilet/commode, and toilet hygiene. Petitioner reported needing assistance with morning personal care, stand-by assist with bathing, transfers, emptying and cleaning his bedside commode, mobility, errands, laundry, light housekeeping, meal preparation, and assistance with using his standing frame. Petitioner indicated he currently received his CLS only 5 days a week Monday through Friday from 8 am until 4 pm totaling 40 hours per week and personally choosing not to staff the remaining 2 hours. (Exhibit A; Testimony.)
4. Following the assessment, the Department determined Petitioner's CLS hours should be reduced based on the information provided by Petitioner during the assessment. In particular, the fact Petitioner did not have a need for assistance on the weekends. (Exhibit A; Testimony.)
5. On June 10, 2024, the Department contacted Petitioner to discuss a reduction in CLS services. During the phone call, Petitioner reported the need for 30 minutes a day for morning care, bathing, and getting dressed; time for emptying his bedside commode; assistance with propelling his wheelchair when going from one end of his home to the other 2 to 3 times a day; assistance with shopping once a week at an hour; assistance with laundry three times a week; assistance with light housekeeping of about an hour a day; assistance with meal preparation 2 hours a day five days a week; assistance with using a standing frame 30 minute a day 5 days a week. (Exhibit A; Testimony.)
6. As a result of the May 14, 2024, assessment, and the June 10, 2024, telephone conversation, the Department determined a reduction of CLS services was warranted with a decrease from 42 hours a week to 22 hours a week. (Exhibit A; Testimony.)
7. On June 17, 2024, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated the following:

Based on the assessment conducted on 05/14/2024, your Comprehensive Community Support Services through Loving Care Home Care are being reduced from 168 weekly units to 88 weekly units and your Home Delivered Meals through Mom's Meals are being reduced from 14 weekly units to 10 weekly units effective 06/26/24. The following services will remain: 1 unit of Personal Emergency Response System monitoring monthly through Guardian Medical Monitoring, 62 cans of liquid nutrition monthly through Sheldon Medical Supply, and 1 unit monthly of Supports Coordination through the Senior Alliance.<sup>1</sup>

8. On July 12, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing appealing the June 17, 2024, notice. (See Hearing File.)

## **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. 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 receiving 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 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.<sup>2</sup>

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

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<sup>1</sup> Exhibit A, p 4.

<sup>2</sup> 42 CFR 430.25(b).

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.<sup>3</sup>

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:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) 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.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.<sup>4</sup>

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to services in general, and CLS in particular, the applicable version of the MPM states in part:

#### **SECTION 4 – SERVICES**

The array of services provided by the MI Choice program is subject to the prior approval of CMS. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

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<sup>3</sup> See 42 CFR 430.25(c)(2).

<sup>4</sup> 42 CFR 440.180(b).

- indicated by the current assessment;
- detailed in the person-centered service plan; and
- provided in accordance with the provisions of the approved waiver.

Services must not be provided unless they are defined in the person-centered service plan and must not precede the establishment of a person-centered service plan. Waiver agencies cannot limit in aggregate the number of participants receiving a given service or the number of services available to any given participant. Participants have the right to receive services from any willing and qualified provider within the waiver agency's provider network. When the waiver agency does not have a willing and qualified provider within their network, the waiver agency must utilize an out-of-network provider at no cost to the participant until an in-network provider can be secured. (Refer to the Providers section of this chapter for information on qualified provider standards.)

MDHHS and waiver agencies do not impose a copayment or any similar charge upon participants for waiver services. MDHHS and waiver agencies do not impose a premium, enrollment fee, or similar cost-sharing arrangement on waiver participants.

Although MI Choice participants must have services approved by the waiver agency, participants have the option to select any participating provider in the waiver agency's provider network, thereby ensuring freedom of choice.

Where applicable, the participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain provider is not grounds for declining another payer in order to access waiver services.

\* \* \*

#### **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 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.

CLS includes:

- Assisting, reminding, cueing, observing, guiding and/or training in household activities, Activities of Daily Living (ADL), or routine household care and maintenance.
- Reminding, cueing, observing or monitoring of medication administration.
- Assistance, support 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 assistance on activities that promote community participation such as using public transportation, using libraries, or volunteer work;
  - Transportation from the participant's residence to medical appointments, 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 service 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.<sup>5</sup>

Additionally, with respect to CLS services, the Minimum Operating Standards for MI Choice Waiver Program Services referenced in the above policy states in part:

2. Community Living Supports (CLS) include:
  - a. Assisting, reminding, cueing, observing, guiding and training in the following activities:
    - i. Meal preparation
    - ii. Laundry
    - iii. Routine, seasonal, and heavy household care and maintenance
    - iv. Activities of daily living such as bathing, eating, dressing, and personal hygiene

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<sup>5</sup> MPM, January 1, 2023, MI Choice Waiver, pp 10-13.

- v. Shopping for food and other necessities of daily living
- b. Assistance, support, and guidance with such activities as:
  - i. Money management
  - ii. Non-medical care (not requiring nursing or physician intervention)
  - iii. Social participation, relationship maintenance, and building community connections to reduce personal isolation
  - iv. Transportation from the participant's residence to community activities, among community activities, and from the community activities back to the participant's residence
  - v. Participation in regular community activities incidental to meeting the individual's community living preferences
  - vi. Attendance at medical appointments
  - vii. Acquiring or procuring goods and services necessary for home and community living
- c. Reminding, cueing, observing, and monitoring of medication administration
- d. Staff assistance with preserving the health and safety of the individual in order that he or she may reside and be supported in the most integrated independent community setting.
- e. Training or assistance on activities that promote community participation, such as using public transportation or libraries, or volunteering.
- f. Dementia support, 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.
- g. Observing and reporting to the supports coordinator any changes in the participant's condition and the home environment.
- 3. When the CLS services provided to the participant include tasks specified in 2.a.i, 2.a.ii, 2.a.iii, 2.a.v, 2.b.i, 2.b.iii, 2.b.v, 2.b.vi, 2.b.vii, 2.d, or 2g above, the

individual furnishing CLS must have previous relevant experience or training and skills in housekeeping, household management, good health practices, observation, reporting, and recording information. Additionally, skills, knowledge, and experience with food preparation, safe food handling procedures, and reporting and identifying abuse and neglect are highly desirable.

4. When the CLS services provided to the participant include tasks specified in 2.a.iv, 2.b.ii, 2.c, 2.d, 2.e, 2.f, or 2.g above, the direct service providers furnishing CLS must also:
  - a. Be supervised by a registered nurse (RN) licensed to practice nursing in the State. At the State's discretion, other qualified individuals may supervise CLS providers. For licensed residential settings, persons employed as facility owners or managers qualify to provide this supervision. The direct care worker's supervisor must be available to the worker at all times the worker is furnishing CLS services.
  - b. Develop in-service training plans and assure all workers providing CLS services are confident and competent in the following areas before delivering CLS services to MI Choice participants, as applicable to the needs of that participant: safety, body mechanics, and food preparation including safe and sanitary food handling procedures.
  - c. Provide an RN to individually train and supervise CLS workers who perform higher-level, noninvasive tasks such as maintenance of catheters and feeding tubes, minor dressing changes, and wound care for each participant who requires such care. The supervising RN must assure each workers confidence and competence in the performance of each task required.
  - d. MDHHS strongly recommends each worker delivering CLS services complete a certified nursing assistant training course, first aid, and CPR training.

\* \* \*

10. The waiver agency or provider agency must train each worker to perform properly each task required for each participant the worker serves before delivering the service to that participant. The supervisor must assure that each worker competently and confidently performs every task assigned for each participant served.<sup>6</sup>

As discussed above, Department decided to reduce Petitioner's CLS from 42 hours per week to 22 hours per week<sup>7</sup>.

In appealing the decision, Petitioner bears the burden of proving by a preponderance of the evidence that Department erred. Moreover, I am limited to reviewing Department's decision in light of the information available at the time the decision was made.

Given the record in this case, Petitioner has failed to meet his burden of proof; and Department's decision must, therefore, be affirmed.

The Department determined the appropriate allocation based on the information provided during the assessment and the information provided during the telephone conversation on June 10, 2024. Petitioner did not dispute the information that was shared other than to indicate he is a "personal person" and didn't want to let people know all of his needs. Petitioner went on to indicate he is a paraplegic and requires a lot of services and furthermore, that he has a worsening pressure sore of his coccyx area that requires additional medical attention. It was undisputed that the information being shared during the hearing was new information that the Department was being apprised of for the first time. It was also undisputed that Petitioner was able to care for himself on the weekends without the need for assistance other than his provider prepping meals for the weekend. It was also undisputed that Petitioner personally chose to reduce his weekly CLS hours by 2 hours a week.

Accordingly, reviewing the decision at issue in this case, the reduction in CLS services, I find that Department's decision was proper, given Petitioner's medical needs. If Petitioner believes there was a change in conditions and circumstances that necessitate a need for additional services, he can always submit a request for additional CLS.

### **DECISION AND ORDER**

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

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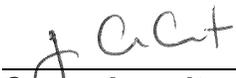
<sup>6</sup> Minimum Operating Standards for MI Choice Services, Attachment H, October 1, 2020.

<sup>7</sup> Petitioner was not appealing the other reductions.

**IT IS THEREFORE ORDERED** that:

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

CA/pe

  
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**Corey Arendt**  
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 and  
First Class Mail:**

**Community Health Representative**  
Gail Wejrowski  
The Senior Alliance  
Wayne, MI 48184  
**Gwejrowski@thesenioralliance.org**

**DHHS Department Representative**  
Heather Hill  
MDHHS  
400 S. Pine, 5<sup>th</sup> Floor  
Lansing, MI 48933  
**HillH3@michigan.gov**

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]