



Date Mailed: March 20, 2025
Docket No.: 25-004257
Case No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED]
MI [REDACTED]

This is an important legal document. Please have someone translate the document.

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এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

IN THE MATTER OF:

MOAHR Docket No.: 25-004257

██████████,
Petitioner,

Agency No.: ██████████
Case Type: ██████████

v

**DEPARTMENT OF HEALTH AND HUMAN
SERVICES,**
Respondent.

_____ /

**Issued and entered
this 20th day of March 2025
by: Corey A. Arendt
Administrative Law Judge**

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 March 13, 2025. ██████████ Petitioner, appeared on her own behalf. ██████████ Petitioner’s Daughter and Provider, appeared as a witness for Petitioner. Linda Hernandez, R.N., Nurse Supports Coordinator, appeared on behalf of Respondent, Tri County Office on Aging (Department).

Exhibits:

Petitioner	None
Department	A. Hearing Summary

ISSUE

Did Department properly deny Petitioner’s request for additional 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. On October 26, 2024, a treating provider, documented Petitioner as being “[a]mbulatory out of department with strong and steady gait.”⁹
3. On November 8, 2024, the Petitioner requested an increase in CLS. (Exhibit A; Testimony.)
4. The Department temporarily increased Petitioner’s CLS hours 3 hours a week, pending a change in condition assessment. (Testimony.)
5. On November 20, 2024, a change in condition assessment took place. Petitioner and Petitioner’s provider participated in the assessment.
6. The assessment included an in-person assessment as well as a review of recent medical records. (Exhibit A; Testimony.)
7. During the assessment, Petitioner, and Petitioner’s Provider provided inconsistent statements regarding what kind of care was provided and the assisted transfer and ambulation demonstration appeared to be unpracticed and awkward as if they rarely perform this task together. At one point, the Petitioner became frustrated with the demonstrations and refused to do anymore. (Exhibit A; Testimony.)
8. On November 25, 2024, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated Petitioner’s CLS hours will be decreased 3 hours a week effective December 12, 2024. The notice stated the following:

Based on an assessment completed by a nurse and social worker on 11-20-24, your needs are being met by a combination of formal and family supports at this time. The assessment did not support the need for additional formal care hours.¹⁰
9. On January 23, 2025, the Petitioner submitted to the Department, a request for internal appeal. (Exhibit A; Testimony.)

⁹ Exhibit A, p 31.

¹⁰ Exhibit A, p 24.

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10. On January 23, 2025, the Department sent Petitioner a Notice of Internal Appeal Decision. The notice upheld the November 25, 2024, denial and provided the following:

Based on a comprehensive assessment completed by a registered nurse and licensed social worker on 11-20-24, your needs are being met by a combination of formal and family supports at this time. Additional care hours can only be authorized if functional assessment indicates a need; the assessment completed on 11-20-24 did not support the need for additional formal care hours.¹¹

11. On February 3, 2025, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (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.¹²

¹¹ Exhibit A, p 28.

¹² 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.¹³

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.¹⁴

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

¹³ See 42 CFR 430.25(c)(2).

¹⁴ 42 CFR 440.180(b).

approved array that a participant needs to live successfully in the community, that are:

- 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;

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- 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.¹⁵

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

¹⁵ MPM, January 1, 2023, MI Choice Waiver, pp 10-13.

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- ii. Laundry
 - iii. Routine, seasonal, and heavy household care and maintenance
 - iv. Activities of daily living such as bathing, eating, dressing, and personal hygiene
 - 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.

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- 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.

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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.¹⁶

As discussed above, the Department reduced Petitioner's CLS by 3 hours a week, following a change in condition assessment. The amount of the reduction directly corresponded to the number of hours the Department had increased Petitioner's hours when Petitioner requested additional hours earlier in the month.

In appealing the decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, I am limited to reviewing the 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 her 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 medical information provided. Specifically, it was indicated the Petitioner and Provider failed to provide the Department with information related to the need for an increase in services and further failed to demonstrate why additional time was needed. Additionally, the medical documentation provided indicated Petitioner was able to ambulate without the need for assistance.

Petitioner argued a need for services but failed to provide any arguments as to what additional services were needed or how additional time would be utilized. Specifically, the Petitioner failed to show the medical necessity for additional time. Additionally troubling for Petitioner, was Petitioner's Provider on cross examination wherein the witness was unable to articulate what services she even provided to the Petitioner beyond medication reminders and later meal preparation.

Accordingly, reviewing the decision at issue in this case, I find sufficient evidence to affirm the Department's actions in this matter.

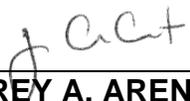
DECISION AND ORDER

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

¹⁶ Minimum Operating Standards for MI Choice Services, Attachment H, October 1, 2020.

IT IS THEREFORE ORDERED that:

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



COREY A. ARENDT
ADMINISTRATIVE LAW JUDGE

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://irs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information, and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by first class mail at their respective addresses as disclosed below or electronic delivery as specified this 20th day of March 2025.

P. Ewalt

**P. Ewalt, Legal Secretary
MOAHR**

Via Electronic Mail:

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