



Date Mailed: July 24, 2025

Docket No.: 25-017217

Case No.: [REDACTED]

Petitioner: [REDACTED]

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

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

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

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件。请让别人翻译文件。

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

[REDACTED] MI [REDACTED]

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Case No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 17, 2025. [REDACTED] appeared for the hearing. [REDACTED] Petitioner's son/caregiver/authorized hearing representative (AHR) appeared and testified on Petitioner's behalf. Kim Motter, RN and Director of Quality appeared and represented Reliance Community Care Partners (Waiver Agency or Reliance). The following individuals appeared and testified as witnesses for the Waiver Agency: Shannon Dodds, MI Choice Waiver Director; Heather Nicklas, Case Manager; and April Sibinovski, RN and Case Manager.

Exhibits:

Petitioner 1 – pp. 1-47
 2 – 1 p.

Department A – Hearing Summary Packet, pp. 1-46

ISSUE

Did the Waiver Agency properly reduce Petitioner's Community Living Supports (CLS) hours from 12 hours per week to 4 hours per week?

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 of Health and Human Services (Department) contracts with the Waiver Agency to provide MI Choice Waiver services to eligible Medicaid beneficiaries.

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2. The Waiver Agency implements the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy, and its contract with the Department.
 3. Petitioner is a [REDACTED] year-old Medicaid beneficiary who was living alone in her home at all times relevant to this matter. (Exhibit A, p 3; Testimony)
 4. Petitioner has a past medical history of chronic obstructive pulmonary disease (primary diagnosis), asthma, chronic pain, arthritis, alcohol abuse (in remission), tertiary neurosyphilis, esophageal reflux, trans ischemic attack, neuropathy, post-traumatic stress disorder, anxiety, depression, gummas/open sores, nocturnal hypoxemia, marijuana use, childhood trauma, osteoarthritis left shoulder, dorsalis, cataract, hypertension, edema, bilateral hearing loss, fibromyalgia, and seizure disorder. (Exhibit A, p. 17)
 5. On November 11, 2024, the Waiver Agency's case management team conducted an in-home assessment of Petitioner to transfer her into the MI Choice Waiver program with Reliance from Northern Lakes Health Care Management. (Exhibit A, pp.1 & 34; Testimony)
 6. On November 11, 2024, during the in-home assessment of Petitioner, the Waiver Agency's case management team noted the following: The assessment was in Petitioner's living room, which did not have any lights in the room; Petitioner was able to hear and communicate well; Although Petitioner reported that she is blind and has issues daily, she was observed getting in and out of her chair multiple times, picking up small pieces of paper off the floor, and getting onto the arm of her chair to fix her curtains; Petitioner was able to read documents to the case management team, read her oxygen order for her upcoming flight, and read the small print on her medication bottle; Petitioner discussed multiple times all the papers she writes and was able to show certificates from the online classes she has taken; Petitioner reported that she is able to set up her medication and hasn't missed any doses; Petitioner was able to sign documents required by the Waiver Agency; and Petitioner stated that she was able to make simple meals for herself, and she takes her dog out for walks almost daily. (Exhibit A, pp 30-47; Testimony)
 7. Based on the November 11, 2024 assessment, the Waiver Agency's case management team determined that: Petitioner was independent with medication management, transferring, toileting (with clothing adjustment and peri care), bathing, dressing, personal hygiene; Petitioner needs hands-on assistance with changing her oxygen/tubing, housekeeping and cooking; Petitioner does not have a car and relies on transportation to/from appointments; and Petitioner continues to qualify for services for case management (CM), CLS, a self-determined caregiver with Fiscal Intermediary, non-emergent medical transportation (NEMT), home

delivered meals (provided by Moms Meals), and a personal emergency response system (PERS). (Exhibit A, pp 3-17)

8. Following the reassessment, the Waiver Agency determined that Petitioner's self-determination CLS hours would be reduced from 12 hours per week to 4 hours per week because Petitioner demonstrated a high level of independence during the in-home assessment on November 11, 2024. (Exhibit A, pp 2; Testimony)
9. On November 13, 2024, the Waiver Agency notified Petitioner that her CLS hours would be reduced to 4 hours per week. (Exhibit A, p. 2; Testimony)
10. On November 24, 2024, Petitioner requested an Internal Appeal with the Waiver Agency to contest the CLS reduction. (Exhibit A, p. 2; Testimony)
11. Petitioner submitted a letter dated December 9, 2024, from a medical doctor, stating that Petitioner needs assistance with her activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADL), from a paid caregiver 12 hours per week, and Petitioner was diagnosed with COPD, neurosyphilis, post-traumatic stress disorder (PTSD), chronic pain, legally blind, dependence on supplemental oxygen, history of cerebrovascular accident (CVA), and hearing loss. (Petitioner Exhibit 1, p.1)
12. On December 16, 2024, the Waiver Agency sent Petitioner a Notice of Internal Appeal Decision with appeal rights, advising Petitioner that the Waiver Agency's decision to reduce her CLS hours from 12 hours per week to 4 hours per week was upheld, and home delivered meals were stopped because this was a duplication of service being provided through a self-determination service. (Exhibit A, pp. 2 & 41-45; Testimony)
13. On May 7, 2025, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for hearing, contesting the Waiver Agency's CLS eligibility determination.

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.

In this case, Petitioner has been receiving 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 Health and Human

Services (Department or MDHHS). 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, skilled nursing facility, intermediate care facility, or intermediate care facility/mentally retarded, and is reimbursable under the State Medicaid Plan. *42 CFR 430.25(c)(2)*.

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

According to *42 CFR 440.180(b)*, 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.

With regard to CLS, the Medicaid Provider Manual provides in pertinent part:

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;

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- 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 Section
July 1, 2020, pp 14-15*

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. To assess what MI Choice Waiver Program services are medically necessary, and therefore covered by Medicaid, the Waiver Agency performs periodic assessments.

In this case, the Waiver Agency conducted an in-home assessment of Petitioner on November 11, 2024. During the assessment, the case management team observed the following: Petitioner was able to hear and communicate well; Petitioner was able to get

in and out of her chair multiple times; Petitioner was able to pick up small pieces of paper off the floor and get onto the arm of her chair to fix her curtains; Petitioner was able to read documents to the case management team, read her oxygen order, and read the small print on her medication bottle; Petitioner discussed multiple times all the papers she writes and was able to show certificates from the online classes she has taken; Petitioner reported that she is able to set up her medication and hasn't missed any doses; Petitioner was able to sign documents required by the Waiver Agency; and Petitioner stated that she was able to make simple meals for herself, and she takes her dog out for walks almost daily.

Following the reassessment, the case management team notified Petitioner that her CLS hours would be reduced from 12 hours per week to 4 hours per week because Petitioner demonstrated a high level of independence during the in-home assessment. The case management team noted during the assessment and testified at the hearing that: Petitioner was independent with medication management, transferring, toileting (with clothing adjustment and peri care), bathing, dressing, personal hygiene; Petitioner needs hands-on assistance with changing her oxygen/tubing, housekeeping and cooking; Petitioner does not have a car and relies on transportation to/from appointments; and Petitioner continues to qualify for services for case management services, CLS, a self-determined caregiver with Fiscal Intermediary, non-emergent medical transportation, home delivered meals (provided by Moms Meals), and a personal emergency response system.

After being notified of the adverse benefit determination regarding CLS, Petitioner filed an internal appeal with the Waiver Agency on November 24, 2024. On December 16, 2024, the Waiver Agency sent a Notice of Internal Appeal Decision with appeal rights, advising Petitioner that the Waiver Agency's decision to reduce her CLS from 12 hours per week to 4 hours per week was upheld.

Petitioner's AHR testified that at the time of the in-home assessment, the Waiver Agency observed Petitioner on a "good day," which does not accurately reflect Petitioner's ongoing need for assistance. According to Petitioner's AHR, Petitioner is legally blind, and her medical condition significantly impacts her ability to perform her activities of daily living and instrumental activities of daily living without assistance.

Petitioner bears the burden of establishing, by a preponderance of evidence, that the Waiver Agency erred in reducing her CLS hours. Based on the evidence presented, Petitioner did not meet this burden of proof. The Waiver Agency established that it completed a thorough in-home assessment in compliance with the applicable law and policy to determine the medically necessary CLS hours that Petitioner was eligible to receive. Although Petitioner did provide a letter dated December 9, 2024, from a medical doctor, stating that she requires assistance with her activities of daily living and instrumental activities of daily living from a paid caregiver 12 hours per week, there was no objective medical evidence to substantiate this claim. Specifically, there was no accompanying documentation such as a comprehensive medical examination report or relevant clinical data to support the necessity of this level of assistance. Additionally, the Waiver Agency's social worker/case manager testified credibly that she spoke with an

ophthalmologist who reported that there was no medical evidence to support the determination that Petitioner is legally blind.

Petitioner did submit an ophthalmology report dated January 15, 2025 (Petitioner Exhibit 2), along with other additional medical examination documentation (Petitioner Exhibit 1) following the Waiver Agency's in-home assessment. However, the undersigned is limited to determining whether the Waiver Agency's eligibility determination was made in accordance with the applicable law and policy based on the information that was available at the time of its eligibility determination. Based on the evidence presented, the Waiver Agency properly reduced Petitioner's CLS hours from 12 hours per week to 4 hours per week. Petitioner retains the option to make a formal request for additional CLS hours through the Waiver Agency if she has new medical documentation to support the medical need for an increase in CLS hours.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly reduced Petitioner's CLS hours from 12 hours per week to 4 hours per week.

IT IS THEREFORE ORDERED that the Waiver Agency's decision is **AFFIRMED**.

Marya A Nelson-Davis

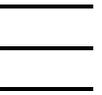
**MARYA A. NELSON-DAVIS
ADMINISTRATIVE LAW JUDGE**

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.



Via First Class Mail
Electronic Mail:

Authorized Hearing Representative

[REDACTED]
MI [REDACTED]
[REDACTED]

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[REDACTED]
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