ISSUE

Whether Respondent properly reduced Petitioner's MI Choice Community Living Supports (CLS) hours from 39.67 hours per week to 22.40 hours per week effective September 15, 2025, and whether Respondent correctly adjusted Petitioner's weekly hours to 25.55 after the Internal Appeal reassessment.

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 the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A, Testimony)

2. The Waiver Agency 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 resides in an adult foster care/home-for-the-aged setting (Suji Home/Whispering Meadows) and receives MI Choice services and 24-hour supervision. (Exhibit A, pp. 14–17, 36–38; Testimony)

4. A COMPASS assessment dated June 24, 2025, documented a need level that supported 39.67 hours per week of services. The assessment found that Petitioner required limited physical assistance with transfers, toileting, personal hygiene, and clothing adjustments; independent bed mobility; and supervision/setup for meals. (Exhibit A, pp. 21–23, 27–29; Testimony).

5. A reassessment dated September 15, 2025, documented increased independence in transfers, bed mobility, toileting, ambulation, and eating. Limited assistance was still needed for dressing and bathing. Petitioner was receiving skilled physical therapy. She qualified under LOCD Door 5. (Exhibit A, pp. 42–47; Testimony)

6. Based on the documented improvements, Respondent issued a Notice of Adverse Benefit Determination reducing services to 22.40 hours per week effective September 15, 2025. (Exhibit A, pp. 69–72; Testimony)

7. Petitioner timely filed an Internal Appeal, and Respondent continued Petitioner's services during the appeal as required. (Exhibit A, pp. 69–72, 73–75; Testimony)

8. Respondent completed a joint reassessment on November 24, 2025. The reassessment determined Petitioner continued to show sustained physical improvements but now required intermittent cueing for transfers, bed mobility, and toileting. Respondent partially granted the appeal and

adjusted the weekly hours to 25.55 effective December 30, 2025. (Exhibit A, pp. 73–75; Testimony)

9. Petitioner has multiple chronic conditions including CHF, COPD, hypertension, arthritis, osteoporosis, anxiety, depression, and diabetes. She uses hearing aids and experiences bladder incontinence. Cognitive assessments show mild deficits but adequate orientation and the ability to make basic decisions with assistance. (Exhibit A, pp. 40–45; 17–20; 45; 38; Testimony)

10. Petitioner is independent with bed mobility and eating, requires limited assistance for dressing and bathing, and continues to receive supervision and setup support in her current residential setting. (Exhibit A, pp. 42–47; 37–38; 48–50; Testimony)

11. On February 2, 2026, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) (Exhibit 1)

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.

Here, 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 Health and Human Services (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, 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).

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

> **4.1.D. COMMUNITY LIVING SUPPORTS**
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> 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. These services are provided 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.

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CLS provided in a residential setting like assisted living, Adult Foster Care, or Homes for the Aged, includes only those services and supports that are in addition to, and must not replace, usual and customary supports and services furnished to residents in the licensed setting. CLS does not include the costs associated with room and board. Documentation in the participant's record must clearly identify the participant's need for additional supports and services not covered by licensure. The PCSP must clearly identify the portion of the participant's supports and services covered by CLS. Homemaking tasks incidental to the provision of assistance with ADL may also be included in CLS but must not replace usual and customary homemaking tasks required by licensure.

Medicaid Provider Manual
MI Choice Waiver Section
July 1, 2025, pp 23-26

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 Medicaid-covered, the Waiver Agency performs periodic assessments.

Petitioner bears the burden of proving, by a preponderance of evidence, that the Waiver Agency erred in taking the instant action.

Respondent's support coordinator explained that she conducted a reassessment of Petitioner on September 15, 2025 and, based on her findings, Petitioner qualified under LOCD Door 5 due to ongoing physical therapy. The coordinator reported that Petitioner demonstrated independence in several areas at that time. Petitioner was able to get out of bed independently, toilet independently, and feed herself without assistance. Transfers, bed mobility, and toileting were described as independent during the September assessment. Based on these findings, CareWell determined that Petitioner's need for care had decreased and reduced her service hours to 22.40 per week. Before the reduction, Petitioner had been receiving 39.67 hours per week.

Respondent's support coordinator further testified that after Petitioner filed an Internal Appeal, a second assessment was conducted by two support coordinators. That reassessment found that Petitioner required some supervision with bed mobility and limited assistance with transfers and toileting. As a result, CareWell increased her hours to 25.55 hours per week. CareWell stated that the current service level is 25.55 hours and that this reflects Petitioner's present needs.

Petitioner's daughter and POA stated that her mother's functioning varies depending on the day, the week, and her mental state. She testified that Petitioner experiences hallucinations and paranoia, including beliefs that her brother intends to harm her, which increase her need for supervision. According to Petitioner's daughter and POA, when Petitioner sleeps poorly at night, she requires more assistance the following day. The AFC home sometimes allows Petitioner to sleep in the living room when she cannot settle down at night.

Petitioner's daughter and POA also described challenges with toileting. She testified that the home often must intervene because Petitioner attempts to clean up accidents on her own, which she is not supposed to do. Petitioner's daughter and POA explained that although Petitioner can eat independently, she occasionally has issues with choking. Petitioner's daughter and POA noted that while her mother can sometimes manage the bathroom with little assistance, she frequently attempts tasks that require staff intervention to prevent injury or improper handling of incontinence issues.

Petitioner's daughter and POA confirmed that Petitioner resides in an AFC home called Suji Homes or Whispering Meadows on 19 Mile Road in Marshall. She testified that Petitioner sometimes experiences silent seizures or stroke-like symptoms in the mornings and that on some days her blood sugar is very low. According to Petitioner's daughter and POA, staff must check carefully each morning to ensure Petitioner is awake, alert, and stable. She stated that medical providers believe these episodes may be related to stress, and she emphasized the importance of minimizing stress for her mother.

Petitioner's daughter and POA stated that her mother's needs fluctuate significantly. Some weeks Petitioner functions well, while other weeks she requires frequent attention throughout the day. Petitioner's daughter and POA expressed concern that the reduction in hours fails to reflect the amount of staff time spent supervising Petitioner, particularly during the night and early morning when her needs are greatest.

Petitioner's daughter and POA also raised concerns about the AFC home requiring a certain level of combined payments from Petitioner and CareWell. She testified that the home wants at least four thousand dollars per month from the combined sources. She fears that if the hours remain low, the home may require Petitioner to move. Petitioner's daughter and POA believes a move would cause a serious decline in Petitioner's mental and physical health because the current home understands how to respond to her silent seizures, stroke-like symptoms, and hallucinations. Petitioner's daughter and POA stated that Petitioner has recently been started on hospice services which now provide a nurse twice a week, a therapist once a week, and regular visits from a social worker.

CareWell reiterated briefly that the original assessment did consider the issues Petitioner's daughter and POA described.

Based on the above findings of fact and conclusions of law, this Administrative Law Judge (ALJ) finds that Petitioner has failed to prove, by a preponderance of the evidence, that the Waiver Agency erred in reducing her CLS hours.

The record shows two detailed COMPASS assessments, June 24 and September 15, 2025, and a joint reassessment on November 24, 2025. Those assessments documented measurable and sustained functional improvements: independence in bed mobility, ambulation with assistive device, toileting (with intermittent cueing), and eating; limited assistance needs for dressing and bathing; and continued, but moderated, fall risk with active physical therapy under LOCD Door 5. (Exhibit A, pp. 42–47, 59–60, 47–48) The September reassessment reasonably supported a reduction from 39.67 hours/week to 22.40/week, and the November joint reassessment prudently corrected upward to 25.55/week to reflect intermittent cueing needs for transfers, bed mobility, and toileting. (Exhibit A, pp. 69–72, 73–75)

Petitioner, through her daughter and POA, argues that the reduction in MI Choice service hours does not reflect the day to day variability in Petitioner's functioning. Petitioner's daughter and POA explained that Petitioner's needs fluctuate depending on factors such as sleep quality, stress, and episodes of hallucinations or paranoia. She also described situations in which staff must intervene to keep Petitioner from attempting tasks that are unsafe, such as cleaning up after incontinence accidents, and testified that on some days Petitioner needs additional monitoring due to silent seizures, stroke like symptoms, or low blood sugar.

Petitioner's daughter and POA expressed concern that the AFC home must spend more time supervising Petitioner than the reduced hours reflect. Finally, Petitioner's daughter and POA emphasized the importance of Petitioner staying in her current home environment and fears that a reduction in hours may lead to financial pressure from the AFC home.

While these concerns reflect understandable difficulties associated with Petitioner's cognitive and physical condition, the testimony does not establish that Respondent's current authorization of 25.55 hours per week is incorrect. Respondent testified that the September 15, 2025, assessment documented measurable improvements in independence. These improvements included independent bed mobility, independent transfers, independent toileting, and independent eating at the time of that assessment. CareWell reduced hours in response to these clinical findings. Respondent later conducted a second, joint reassessment after the Internal Appeal. That reassessment specifically acknowledged the type of issues raised by Petitioner's daughter and POA, including the need for intermittent cueing and limited assistance in bed mobility, transfers, and toileting. Based on this updated information, Respondent increased Petitioner's hours to 25.55 per week.

Respondent's testimony indicates that the reassessment process incorporated information from Petitioner, Petitioner's daughter and POA, and the AFC home. The second assessment was conducted in person by two support coordinators, who concluded that Petitioner's needs were greater than originally recorded, but still less than the 39.67 hours previously authorized. Respondent's current authorization of 25.55 hours reflects the clinical judgment of the reassessment team and acknowledges that Petitioner does require some assistance, but no longer requires the higher level of hands on care that justified the earlier service level.

Petitioner's daughter and POA's testimony concerning Petitioner's hallucinations, stress related episodes, and medical fluctuations is important contextual information. However, the record does not show that these issues create a consistent need for additional direct care time beyond what Respondent has already incorporated into the revised plan. Much of what Petitioner's daughter and POA described involves supervision already provided in the AFC home setting, which is separate from the MI Choice task hours and not funded through the task list. The testimony also indicates that hospice and other clinical providers are now supplying additional support services, which further supplements Petitioner's care.

Although Petitioner's daughter and POA expressed worry about the AFC home's financial expectations and the possibility of Petitioner being asked to move, those concerns relate to the administrative and financial relationship between the home, the family, and outside support services. These factors do not establish that Respondent misapplied the medical necessity standard or performed an inaccurate assessment of Petitioner's functional needs. The purpose of MI Choice service hours is to provide medically necessary assistance based on documented need, not to ensure a particular financial arrangement between the resident and the AFC home.

In summary, Petitioner's concerns primarily relate to fluctuating behavioral and medical symptoms and to the AFC home's operational requirements. Respondent addressed Petitioner's variable functioning by conducting a reassessment and increasing the hours to 25.55. The testimony presented does not demonstrate that Petitioner consistently requires the prior 39.67 hours each week. Respondent's actions reflect assessment findings, incorporate the issues raised by Petitioner's daughter and POA, and align with established standards for determining medical necessity.

On this record, the preponderance of evidence supports Respondent's determination that 25.55 hours/week adequately and lawfully meets Petitioner's current needs under Medicaid medical necessity and utilization control requirements. Petitioner did not present persuasive evidence that her needs consistently require restoration to the prior 39.67 hours/week or that Respondent failed to consider relevant clinical and functional information, particularly given the corrective reassessment in November. (Exhibit A, pp. 73–75; 42–47)

Accordingly, Respondent's position is affirmed.

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 and authorized Petitioner's CLS hours.

IT IS THEREFORE ORDERED that:

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