

assessment. (uncontested)

6. The Appellant has married since becoming a program participant. (uncontested)
7. The Appellant's wife is able bodied. She works outside the home as a care provider.
8. On ██████████, the ████████ determined the Appellant had supports available to him sufficient to terminate homemaking services. The Agency determined his spouse could provide homemaking services sufficient to meet his needs. The agency thereafter sent notice of suspension of homemaking services only. (uncontested)
9. The Appellant appealed the suspension of services ██████████.

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

This Appellant 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 Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, 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)*

1915 (c) (42 USC 1396n (c) allows home and community based services to be classified as “medical assistance” under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b)).

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)). Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

- 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 HCFA as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(b)

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

The issue appealed is whether the Waiver Agency properly determined the Appellant no longer requires agency paid homemaking services now that he is married to an able bodied person. The Appellant states his wife works outside the home 40 hours per week and he does nothing. He does not want her to have to come home and do everything after working all day. He testified she works Monday, Thursday and Friday from 8-8. He then testified she works Monday-Friday, with Tuesday and Wednesday being her short days.

The Agency's witness testified contact with the wife's employer confirmed she does not work more than 40 hours per week. Additionally, uncontested testimony was presented that the Appellant is partially paralysed on his left side following a stroke. He used to live alone and had risk for falls. He does not live alone any more, following his marriage. He has supports in place he did not have when he was given an assessment initially and qualified through an exception request. The testimony further established meals on wheels was not terminated or cut, merely homemaking services.

This Administrative Law Judge finds the suspension of homemaking services appropriate in this circumstance. The Appellant is married and has an able bodied spouse. There is no reason she cannot perform homemaking services inside of her own home and for her spouse. The testimony from the Appellant did not establish the Waiver Agency improperly determined his need for homemaking services had ended.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly suspended the Appellant's MI Choice Waiver homemaking services.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date mailed: 12/1/2009

***** NOTICE *****

The State Office of Administrative Hearing and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearing and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.



Docket 2009-36859 EDW
Decision and Order