STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2011-18589 EDW
Case No. 44260450

Appellant
_____________________/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held on . The Appellant is the of the beneficiary and represented the beneficiary at the hearing.

(AAA) was present on behalf of the Department of Community Health (hereafter, 'Department'). Witnesses for the Department included and .

ISSUE

Did the Department properly terminate meal delivery service for the Appellant?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Medicaid beneficiary is enrolled in the MI Choice Waiver program.

2. The beneficiary has been a program participant while his was employed outside of the home. He has received meal delivery of 1 meal per day as part of his service plan in the past.

3. Following his retirement, the waiver agency reviewed the beneficiary's service plan and needs.

4. The Waiver agency determined the beneficiary did not require or need home

delivery of meals any longer. A Notice of Termination of this benefit was mailed. Other services were kept in place and are not at issue in this hearing.

5. The Appellant requested a hearing .

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.

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 , 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 under section 1915(c) exist for a period of three years initially, and may be renewed thereafter for periods of five years. *42 CFR 430.25(h)(2)(i)*

CMS [Centers for Medicare and Medicaid Services] may grant a State an extension of its existing waiver for up to 90 days to permit the State to document more fully the satisfaction of statutory and regulatory requirements needed to approve a new waiver request. CMS will consider this option when it requests additional information on a new waiver request submitted by a State to extend its existing waiver or when CMS disapproves a State's request for extension. *42 CFR 441.304(c)*

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)

Denial of additional personal care services

The MI Choice waiver defines Personal Care as follows:

> "Assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service may also include assistance with the preparation of meals but does not include the cost of the meals. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the care furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. . . ."

(MI Choice Waiver, Updated September 2002; Appendix B, pages B1 and B2)

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 Operating Standards applicable to the MI Choice Waiver Program require Waiver Agents to develop written policies and procedures compatible with the "General Operating Standards for Waiver Agents and Their Contracted Service Providers."

Here, the Area Agency on Aging ( ) has implemented criteria contained in the Michigan Department of Community Health minimum operating standards for MI Choice Waiver Programs Services for home delivered meals. The criteria were made part of the evidentiary record in the Department's Exhibit A, pages 8-9. The minimum standard for home delivered meals set forth in the Department's operating standards contains 6 explicit criteria, as follows:

> 1. The participant must be unable to obtain food or prepare complete meals
>
> 2. The participant does not have an adult living at the same residence or in the vicinity that is able and wiling to prepare all meals
>
> 3. The participant does not have a paid caregiver that is able and willing to prepare meals for the participant.
>
> 4. The provider can appropriately meet the participant's special dietary needs and the meals available would not jeopardize the health of the individual.
>
> 5. The participant must be able to feed himself/herself.
>
> 6. The participant must agree to be home when meals are delivered, or contact the program when absence is unavoidable.

The Department's Operating Standards require, as a minimum standard, that home delivered meals are available to those who do not have another adult living with them or in the vicinity who is able and willing to prepare all meals. The beneficiary's testified they seek to contest the Agency's action because the beneficiary enjoys the meals, they are nutritious and he has special dietary needs and it provides a break to her. She stated she does have to make the other two meals per day and all snacks. She said it is also a financial benefit.

The Agency provided testimony indicating there is still an authorization for homemaking services that could include some meal preparation for the beneficiary if the beneficiary requested the service provider to perform the task. This testimony was supported by corroborating documentation of his service authorization.

This ALJ finds the Agency properly terminated home meal delivery for this beneficiary based upon the minimum criteria set forth in the operating standards issued by the Department of Community Health. Not only does the Appellant still have access to some assistance with meal preparation in the authorization of homemaking services, he does reside with another adult who is able to make meals on his behalf. The minimum standards do not allow for authorization of home delivery of meals in the Appellant's circumstance.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department properly terminated home delivered meal service to the Appellant.

IT IS THEREFORE ORDERED that:

The Department's prior decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
For Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 3/31/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 Hearings and Rules for the Department of Community Health 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.