

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011- 32637 EDW

Case No. ██████████

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 ██████████, daughter, appeared on the Appellant's behalf. ██████████, daughter, appeared as a witness for the Appellant. ██████████, RN Supports Coordinator Care Manager, appeared on behalf of ██████████, the Department of Community Health's MI Choice program waiver agency (hereafter, Waiver Agency). ██████████, Clinical Supports Manager appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly discontinue the Appellant's Home Delivered Meals under the MI Choice Waiver program?

FINDINGS OF FACT

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

1. The Appellant is a ██████ year old Medicaid beneficiary, and enrolled in the MI Choice Waiver program.
2. The Appellant has been receiving home delivered meals seven days per week under the MI Choice Waiver program. (Exhibit 1, page 2)

3. The Appellant also receives 14 cans of liquid nutrition-diabetic per week. (Exhibit 1, pages 2 and 28)
4. The Appellant lives with her son, is never left alone, and has an aide from an agency 7 days per week. The Appellant's daughters also provide informal support. (Exhibit 1, pages 7-8 and 19; RN Supports Coordinator Care Manager Testimony)
5. The eligibility criteria for persons receiving home delivered meals through the waiver program include that the participant is unable to obtain food or prepare meals, does not have an adult living at the same residence or in the vicinity that is able and willing to prepare all meals, does not have a paid caregiver that is able and willing to prepare meals for the participant, and the participant must be able to feed himself/herself. *Michigan Department of Community Health Minimum Operating Standards for the MI Choice Waiver Program Services, Attachment H, Last Revised August 20, 2010, Page 28.* (Exhibit 1, pages 26-27)
6. The aide assists the Appellant with breakfast each morning. (Exhibit 1, page 19)
7. The Appellant's children also assist her with eating, including reminders to eat, verbal prompting to open mouth, chew, swallow, and spoon feeding. It was reported that there is plenty of food in the home, the Appellant's son will give her anything she wants to eat and set it in front of her, one daughter is there for lunchtime and another daughter is there for dinnertime. (Exhibit 1, pages 9, 11, 13-16)
8. On ██████████, the waiver agency issued notice to the Appellant that home delivered meals would be discontinued effective ██████████, because she does not meet the waiver standards for home delivered meals. (Exhibit 1, page 22)
9. On ██████████, a Request for Hearing was filed on the Appellant's behalf. On ██████████, the Request for Hearing was resubmitted with the Appellant's signature. (Exhibit 2)

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.

The 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 Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case [REDACTED] functions 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)

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)¹ of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

It is undisputed that the Appellant has a need for personal care services.

The MI Choice waiver defines Service and Personal Care as follows:

“A range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the person) or cueing to prompt the participant to perform a task. Personal care services may be provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law. Personal care under the waiver differs in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care services in the State plan. The differences between the waiver coverage and the State plan are that the provider qualification and the training requirements are more stringent for personal care as provided under the waiver than the requirements for this services under the State plan. Personal care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. This service may include assistance with preparation of meals, but does not include the cost of the meals themselves. 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 service furnished, or which are essential to the health and welfare of the individual, rather than the individual’s family. Personal care

¹ Services for the chronically mentally ill.

may be furnished outside the participant's home. The participant oversees and supervises individual providers on an ongoing basis when participating in SD options."

MI Choice Waiver, April 9, 2009;
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Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230.

In the present case, the Appellant has been receiving home delivered meals seven days per week through the MI Choice Waiver Services program. (Exhibit 1, page 2) The eligibility criteria for persons receiving home delivered meals through the waiver program include:

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

Michigan Department of Community Health, Minimum Operating Standards for the MI Choice Waiver Program Services, Attachment H, Last Revised August 20, 2010, Page 28. (Exhibit 1, pages 26-27)

The evidence supports that the Appellant is unable to obtain food or prepare complete meals. The waiver agency re-assessment report indicates that the Appellant is totally dependant for meal preparation and shopping. (Exhibit 1, page 17) It was uncontested that the Appellant's son lives with her, one of her daughters lives next door, and other daughters also provide informal support. The Appellant's representative contested that she and her siblings are able to prepare all meals for the Appellant, that the paid caregiver prepares any meals, and that the meals the Appellant's son prepares

appropriately meet the Appellant's special dietary needs.

However, the re-assessment report repeatedly indicates that the Appellant is not able to feed herself and requires maximal assistance with this activity of daily living. The re-assessment notes show that the Appellant's children assist her with eating, including reminders to eat, verbal prompting to open mouth, chew, and swallow, as well as spoon feeding. (Exhibit 1, pages 9, 11, 13-16) While this ALJ sympathizes with the Appellant's circumstances, and does not doubt that the Appellant benefitted from receiving home delivered meals, she must review the action taken by the waiver agency under the existing policy. The Appellant can not meet the criteria for home delivered meals because she is unable to feed herself. The waiver agency's determination must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department properly discontinued the Appellant's home delivered meals under the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/20/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.