

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-32659 EDW
Case No. 98617645

DECISION AND ORDER

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

After due notice, a hearing was held on Thursday, ██████████. ██████████, Appellant, appeared and testified in her own behalf.

██████████, Director of Quality, represented the Department's MI Choice Waiver Agency, HHS Health Options. ██████████, Clinical Manager for HHS appeared as a witness on behalf of the Waiver Agency, HHS Health Options.

ISSUE

Did the MI Choice Waiver Agency properly deny the Appellant's request for the purchase of exercise equipment, a True Stretch machine, as not medically necessary?

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 HHS, Health Options (HHS or waiver Agency) to provide MI Choice Waiver services to eligible beneficiaries.
2. HHS must implement the MI Choice Waiver program in accordance to Michigan's waiver agreement, Department policy, and its contract with the Department.
3. Appellant is a ██████ year old (DOB ██████████) Medicaid beneficiary. (Exhibit 1, pp 2, 20).
4. Appellant is enrolled in the MI Choice Waiver program. (Testimony).

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5. Appellant' was diagnosed with low back pain and on [REDACTED] her treating physician gave her a prescription for a True Stretch machine to be used daily as instructed by her therapist. (Exhibit 1, pp 6-7).
6. On [REDACTED], the MI Choice Waiver Agency provided Appellant with an adequate action notice denying the purchase of the requested exercise equipment as not being medically necessary. (Exhibit 1, p. 2).
7. On [REDACTED], MAHS received Appellant's request for a hearing to contest the denial of the requested exercise equipment. (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.

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 Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case an Area Agency on Aging (AAA), 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).

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. 42 CFR 440.180(b).

The Minimum Operating Standards applicable to the MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards for Specialized Medical Equipment and Supplies provide, in part, the following:

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Operating Standards for the MI Choice Waiver Program

SERVICE NAME	Specialized Medical Equipment and Supplies
SERVICE DEFINITION	Specialized medical equipment and supplies to include devices, controls, or appliances, specified in the plan of care, which enable recipients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the State plan and shall exclude those items which are not of direct medical or remedial benefit to the individual. All items shall meet applicable

standards of manufacture, design and installation.

The MI Choice waiver 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*. In order to assess what MI Choice waiver program services are medically necessary, and therefore Medicaid-covered, the MI Choice waiver program performs periodic assessments.

Department Medicaid policy incorporates and elaborates on the federal regulation requirement that Medicaid-funded services be provided in an appropriate amount. The Medicaid Provider Manual sets out the medical necessity eligibility requirements, in pertinent part:

2.5.B. MEDICAL NECESSITY DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.
- Documented in the individual plan of service.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, April 1, 2011, page 13.

The Appellant requested the purchase of exercise equipment, a True Stretch machine, through the MI Choice waiver program. On [REDACTED], the MI Choice Waiver Agency sent Appellant an adequate action notice denying the purchase of the requested exercise equipment as not being medically necessary. The Appellant appealed the

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denial, and thus, bears the burden of proving, by a preponderance of evidence that the requested exercise equipment is medically necessary.

██████████ testified on behalf of the Waiver Agent that they received a request for the purchase of a True Stretch unit that was used at a Fitness Center. The purchase was to assist Appellant with the treatment of her low back pain. ██████████ stated that based upon the physical therapy notes provided to the Waiver Agent, the clinical guidelines for medical necessity, and the definition of durable medical equipment, they denied the purchase of the True Stretch unit because the unit did not meet the definition of durable medical equipment. Because the Appellant was under the traditional waiver program, it did not fall under goods and services since it was not a standard waiver program benefit.

The Waiver Agent's other witness, ██████████, testified that when they received Appellant's request she went through the therapy notes. She noted Appellant had good results with the therapy, but was inconsistent with her visits and her home exercise program and could have had better results. ██████████ then looked at the standard practice for treatment of back pain, i.e., the clinical guidelines from the American College of Physicians and the American Pain Society. (See flow chart, Exhibit 1, p 5).

██████████ testified she then referred to Attachment H for the minimum operating standards for the MI Choice Waiver Program Services. (Exhibit 1, p 3). ██████████ stated they were obligated to follow these standards as they are a part of the MI Choice Waiver Agent Contract that they have with the Michigan Department of Community Health. ██████████ stated that according to the minimum operating standards to determine what is appropriate for purchasing under durable medical equipment the waiver agency has to look at how it would increase the individual's ability to perform activities of daily living, that is, how it would make them more independent and decrease their need for services.

██████████ stated the True Stretch would be beneficial. However, it is not medically necessary because the Appellant could receive the same results with a home exercise program. ██████████ stated that was the reason for denying the request for purchase of the True Stretch. ██████████ stated that Appellant was sent an adequate action notice denying the purchase of the requested exercise equipment as not being medically necessary or reasonable, effective May 2, 2011. (Exhibit 1, p 2).

The Appellant testified she personally requested to go to therapy because she was assured there was more that they could do to improve her mobility and flexibility. Appellant stated that due to her degenerative condition her situation is only going to get worse to the point that eventually she won't be able to walk.

Appellant stated that she now has every thing at home they used on her at therapy except the True Stretch. Appellant felt the True Stretch was the only thing that helped her flexibility. Appellant thought that having this in her home would be easier and cheaper than going to therapy visits all the time. Appellant missed therapy when she

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was sick. She also admitted she did not do her exercises every day, but she did what she felt she could do at that time. Appellant felt that the True Stretch really helped her and she would benefit from having one in her home.

██████████ responded that the MI Choice Waiver program is the payor of last resort. Further, if the True Stretch had met the definition of durable medical goods it would have required State Medicaid Plan prior authorization. ██████████ state the Waiver Agent had to look at costs and other options for treatment the Appellant's low back pain. ██████████ stated there were other options for treating Appellant's low back pain that did not include the use of the True Stretch.

This ALJ finds the MI Choice Agency properly denied the Appellant's request for the purchase of exercise equipment, a True Stretch machine, as not medically necessary. The Appellant failed to establish by a preponderance of that the purchase of the requested exercise equipment, a True Stretch machine, was medically necessary.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus the True Stretch machine cannot be authorized for the Appellant based upon the evidence of record. *42 CFR 440.230*.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly denied the Appellant's request for the purchase of exercise equipment, a True Stretch machine, as not medically necessary.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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CC:



Date Mailed: 11/23/11

***** NOTICE *****

The Michigan Administrative Hearing System 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 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.