

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-24627 EDW
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant appeared and testified on his own behalf. [REDACTED], Director of Community and Clinical Services, represented the Department of Community Health's Waiver Agency, Senior Services, Inc. ("Waiver Agency" or "Senior Services"). [REDACTED], social worker, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's home delivered meals through the MI Choice Waiver Program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [REDACTED] year-old man who has been diagnosed with diabetes Guillain-Barré syndrome. He has also undergone quadruple heart surgery and has a history of bladder and prostate cancer. Appellant uses both a pacemaker and a CPAP machine. (Testimony of Appellant).
2. [REDACTED] is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Appellant is enrolled in and has been receiving MI Choice waiver services through [REDACTED]. Among the services Appellant was receiving were home delivered meals, homemaker services, a private duty nurse,

and a personal emergency response system. (Testimony of ██████████).

4. Per policy, a client must be home when meals are delivered or contact the program when absence is unavoidable. (Exhibit 1, page 2).
5. Appellant is unable to consistently answer his door when the meals are being delivered in the morning. (Testimony of Appellant). According to Appellant, he barely sleeps at night and needs to nap in the morning. (Testimony of Appellant). Appellant also notes that he cannot hear the doorbell because his CPAP is loud and his hearing aids are out. (Testimony of Appellant). Appellant further notes that it takes him ten to fifteen minutes to answer the door. (Testimony of Appellant).
6. When advised that he had to be at home and receive the home delivered meals, Appellant asked that the rules be made more flexible in light of his circumstances. (Testimony of Appellant).
7. Appellant also told ██████████ that, if an exception could not be made, then she should just cancel his home delivered meals. (Testimony of Appellant).
8. On ██████████, ██████████ sent Appellant a notice that it was terminating his services because of "client choice" and that the termination was effective immediately. (Exhibit 1, page 6).
9. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 2, page 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. 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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. 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 ██████████, 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 C.F.R. § 430.25(b))

With respect to the MI Choice Waiver Program and home delivered meals, the Medicaid Provider Manual (MPM) states:

4.1.L. HOME DELIVERED MEALS

Home Delivered Meals (HDM) is the provision of one to two nutritionally sound meals per day to a participant who is unable to care for their own nutritional needs. The unit of service is one meal delivered to the participant's home or to the participant's selected congregate meal site that provides a minimum of one-third of the current recommended dietary allowance (RDA) for the age group as established by the Food and Nutritional Board of the National Research Council of the National Academy of Sciences. Allowances shall be made in HDMs for specialized or therapeutic diets as indicated in the participant's plan of service. A Home Delivered Meal cannot constitute a full nutritional regimen.

(MPM, MI Choice Waiver Chapter
January 1, 2012, page 14)

Moreover, the MPM also provides:

4.5 OPERATING STANDARDS

MDCH maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service

requirements. Billing codes and units are also defined in the document.

(MPM, MI Choice Waiver Chapter
January 1, 2012, page 17)

Regarding home delivered meals, the Minimum Operating Standards for MI Choice Waiver Program Services referred to in the MPM provides in part:

2. Each waiver agent must have written eligibility criteria for persons receiving home delivered meals through the waiver program which include, at a minimum:
 - 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.**

(MI Choice Operating Standards, page 28 (emphasis added))

Here, it is undisputed that Appellant cannot comply with the above policy and cannot agree to be home when meals are delivered or to contact the program when absence is unavoidable. Appellant also confirms that he told ██████████ to cancel his home delivered meal if an exception to policy cannot be made.

This Administrative Law Judge, like ██████████, does not possess equitable powers and must follow the policies and procedures dictated by the Department. The policy regarding home delivered meals is clear in this case and Appellant is unable to comply with it. Accordingly, the Waiver Agency's decision to terminate his home delivered meals 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 terminated Appellant's home delivered meals through the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

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

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 2/27/2012

***** 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.