

**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:

██████████ Case  
Appellant  
\_\_\_\_\_ /

Docket No. 2012-58079 EDW  
No. ██████████

**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 ██████████, Appellant's granddaughter, appeared and testified on behalf of ██████████ Appellant.

██████████ LBSW, Waiver Manager, represented the Department's MI Choice Waiver Agency, Region 2 Area Agency on Aging, (Waiver Agency or Region 2 AAA).

**ISSUE**

Did the Waiver Agency properly discontinue Appellant's home delivered meals?

**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 an ██████ year old Medicaid beneficiary, born ██████████ (Exhibit A, p 4)
2. Appellant is currently enrolled in the MI Choice Waiver Program. (Exhibit A; Testimony).
3. Appellant's diagnosis include: Dementia, Hypertension, Arthritis, Anxiety, and Schizophrenia. Appellant also had a total knee replacement many years ago. (Exhibit A, p 15). Appellant is totally dependent on others for her activities of daily living. (Exhibit A, p 18-19)
4. The Appellant resides in a single family home with her daughter ██████████ granddaughter ██████████, and grandson ██████████, all of whom are Appellant's caregivers. Appellant's grandson ██████████ is her paid CLS caregiver through

self-determination, but all three provide informal supports to Appellant. (Exhibit A, p 22; Testimony).

5. On ██████████ a Waiver Agency social worker and nurse met with Appellant in her home and performed a full reassessment. (Exhibit A, pp 9-22).
6. During the reassessment the Waiver Agency social worker and nurse asked the Appellant questions, observed her abilities and consulted Appellant's other medical documentation. (Exhibit A, pp 9-22; Testimony).
7. Based on the ██████████ reassessment, the Waiver Agency determined that the home delivered meals Appellant has been receiving were a duplication of services because meal preparation is a service included in the Community Living Supports (CLS) hours provided to Appellant through self-determination. (Exhibit A, p 5; Testimony).
8. On ██████████ the Waiver Agency provided Appellant with notice that her home delivered meals would be eliminated effective ██████████ (Exhibit A, p 5). However, Appellant's home delivered meals were continued by the Waiver Agency during the pendency of this appeal. (Testimony)
9. On ██████████ the Appellant requested a hearing to contest the elimination of home delivered meals. (Exhibit 1). In her request, Appellant stated:

I am unable to walk on my own and unable to cook for myself. (Exhibit 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 (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, function as the Department's administrative agency.

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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 MI Choice Waiver Program lists services available under the waiver program and addresses the standards expected for each service. The Operating Standards include Community Living Supports (CLS).

The MI Choice Waiver defines Community Living Supports as follows:

#### **4.1.I. COMMUNITY LIVING SUPPORTS**

Community Living Supports (CLS) services facilitate a participant's independence and promote reasonable participation in the community. Services can be provided in the participant's residence or in a community setting to meet support and service needs.

CLS may include assisting, reminding, cueing, observing, guiding, or training with meal preparation, laundry, household care and maintenance, shopping for food and other necessities, and activities of daily living such as bathing, eating, dressing, or personal hygiene. It may provide assistance with such activities as money management, nonmedical care (not requiring nurse or physician intervention), social participation, relationship maintenance and building community connections to reduce personal isolation, non-medical transportation from the participant's residence to community activities, participation in regular community activities incidental to meeting the participant's community living preferences, attendance at medical appointments, and acquiring or procuring goods and services necessary for home and community living.

CLS staff may provide other assistance necessary to preserve the health and safety of the participant so they may reside and be supported in the most integrated and independent community setting. Emphasis added.

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The MI Choice Waiver Program 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 Waiver Agency performs periodic assessments.

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The Appellant was receiving home delivered meals through the MI Choice Waiver Program. The Appellant bears the burden of proving, by a preponderance of evidence, that home delivered meals are medically necessary.

██████████, LBSW, Waiver Manager, testified that Appellant resides with her daughter, her granddaughter and her grandson. ██████████ indicated that Appellant receives 30 hours per week of Community Living Supports through self-determination and that her grandson is her paid CLS worker. ██████████ went on to testify that one of the duties of a CLS worker is meal preparation, so the home delivered meals Appellant was receiving amounted to a duplication of services. Finally, ██████████ testified that the Waiver Agency had left home delivered meals in place pending the outcome of this hearing.

██████████ Appellant's granddaughter, testified that she herself is applying for disability because of depression and bi-polar disorder and is unable to cook for Appellant. ██████████ indicated that Appellant's grandson Aaron, who provides the CLS hours for Appellant, does not know how to cook. ██████████ indicated that they really relied on the home delivered meals to make sure that Appellant ate a balanced diet and if it were not for the home delivered meals Appellant would not have the opportunity to drink milk because they cannot afford it.

In response to ██████████ testimony, ██████████ indicated that CLS workers are required to have the ability to do all aspects of the job, including meal preparation. ██████████ indicated that Appellant could discontinue her self-determination and let the Waiver Agency hire an outside CLS worker who would be able to prepare meals for Appellant. ██████████ indicated that because of Appellant's dementia, she would prefer to have people familiar to Appellant providing her care.

This ALJ finds that the Waiver Agency properly eliminated Appellant's home delivered meals because those meals amounted to a duplication of services. The Appellant failed to establish by a preponderance of the evidence that home delivered meals were medically necessary. It is clear that Appellant has significant medical issues and requires significant care, but Appellant also receives substantial services through the MI Choice Waiver, including 30 CLS hours per week. CLS workers are required to participate in meal preparation, so having home delivered meals does amount to a duplication of services. Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus home delivered meals 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 that the MI Choice Waiver Agency properly eliminated Appellant's home delivered meals.

**IT IS THEREFORE ORDERED** that:

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



Robert J. Meade  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 9/07/2012

**\*\*\* 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.