

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2012-58499 EDW

Case 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.* and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ Appellant's care provider, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████ Waiver Services Director, represented the Department of Community Health's Waiver Agency, the Region II Area on Aging ("Waiver Agency" or "AAA").

ISSUE

Did the Waiver Agency properly terminate 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. AAA 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.
2. Appellant is a ██████ year-old ██████ who has been enrolled in and receiving MI Choice waiver services through AAA, including 28 hours per week of Community Living Supports (CLS ██████), home delivered meals, and transportation. (Exhibit 2, pages 11-12; Testimony of ██████).
3. Appellant's CLS services included assistance with meal preparation. (Exhibit 2, page 13; Testimony of ██████).
4. Given that Appellant was receiving both meal preparation services from his care provider and home delivered meals, the Waiver Agency

determined that his services were being duplicated and it decided to terminate his home delivered meals. (Exhibit 2, pages 11-12; Testimony of ██████████).

5. On ██████████ AAA sent Appellant written notice that his home delivered meals were being terminated. The effective date of the termination was identified as ██████████ (Exhibit 2, page 9).
6. On ██████████ the Department received a Request for Hearing regarding the termination in this case. In that request, Appellant asserts that there was no duplication of services and that he only gets home delivered meals on days when his care provider does not work. (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.

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 Services to the Michigan Department of Community Health (Department). Regional agencies, in this case 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).]

Here, it is undisputed that the Appellant has a need for some services and he

has continuously been receiving care. However, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

The Waiver Agency terminated Appellant's home delivered meals after determining that he was already being provided with CLS and that his CLS included assistance with meal preparation. In support of its determination, the Waiver Agency's representative notes that the Medicaid Provider Manual (MPM) for the state of Michigan provides that CLS includes assistance with meal preparation and precludes the duplication of services:

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 assistance with, 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.

CLS services can not be authorized in circumstances where there would be a duplication of services available elsewhere or under the State Plan. CLS services cannot be authorized in lieu of, as a duplication of, or as a supplement to similar authorized waiver services. The

distinction must be apparent by unique hours and units in the individual plan of services. Tasks that address personal care needs differ in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care service in the State Plan. The differences between the waiver coverage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

When transportation incidental to the provision of CLS is included, it must not also be authorized as a separate waiver service. Transportation to medical appointments is covered by Medicaid through the State Plan.

Community Living Supports do not include the cost associated with room and board. [MPM, MI Choice Waiver Chapter, April 1, 2012, pages 12-13 (emphasis added).]

While the relevant facts do not appear to be in dispute in this case, the testimony and evidence does reflect the confusion over the duties Appellant's care giver was to perform. According to the Waiver Agency's representative, Appellant's CLS included assistance with meal preparation. Moreover, that assistance was to meet all of Appellant's medically necessary needs with respect to that task. Appellant's care provider, on the other hand, testified that, while he helps prepare Appellant's meals the 4 days a week the care provider works, he did not know he was to take care of Appellant's meals the remaining 3 days of the week. Those were the days Appellant was receiving meals on wheels.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in terminating his home delivered meals. Given the evidence in this case, Appellant has failed to meet that burden. As quoted above, the MPM specifically states that CLS includes assistance with meal preparation. Similarly, AAA's representative testified that the CLS was intended to meet all of Appellant's medical needs. Appellant's care provider has been providing assistance with meal preparation, just not every day. However, he also testified that, while it may be difficult, he can help provide meals every day by leaving frozen meals for Appellant to heat up when the care provider is not there. According to the Waiver Agency, that is what the care provider should have been doing all along. Therefore, given the above record, Appellant has failed to meet his burden of proving that the Waiver Agency erred and the Waiver Agency's decision must be 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.

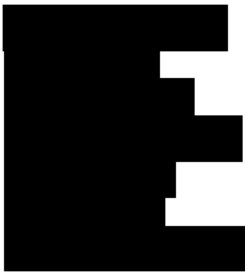
IT IS THEREFORE ORDERED that:

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



Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/17/2012

***** 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.