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

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IN THE MAT			
	Docket No. 2012-59701 EDW Case No.		
Appe	llant		
	<i>'</i>		
DECISION AND ORDER			
	is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 431.200 et seq. upon the Appellant's request for a hearing.		
	tice, a hearing was held on ter, appeared and testified on Appellant's behalf.		
Department Waiver Age	LBSW, Contracts Manager, appeared and testified on behalf of the s Waiver Agen cy, Region 2 Area Agency on Aging (Region 2 AAA or ncy).		
ISSUE			
Did the setup	ne Waiver Agency properly cancel payment for Appellant's medication ?		
FINDINGS (	OF FACT		
	strative Law Judge, based upon the competent, material and substantial the whole record, finds as material fact:		
1.	The De partment contracts with R egion 2 AAA to provide MI Choic e Waiver services to eligible beneficiaries. (Testimony)		
2.	Region 2 AAA must implement t he MI Choice Waiv er program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.		
3.	The Appellant is a year-old woman, born p 3). (Exhibit 1,		
4.	The Appellant lives in a single family home with her daughter and her		

daughter's husband. Appell ant's granddaughter,

is her paid

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caregiver, and spends 5-6 hours per day in Appellant's home providing care. Appellant's granddaught er, Appellant's medications once per week. (Exhibit A, Testimony)

- 5. Following a reassessment in that there were persons living with Appellant who could do her medication setup. (Exhibit A, Testimony)
- 6. On the Waiver Agency notified Appellant t hat it would be cancelling payment for medication setup, effective A, p 9; Testimony). (Exhibit
- 7. On the Michigan Admi nistrative Hearing System received a request for hearing from the Appellant. (Exhibit 1).

### **CONCLUSIONS OF LAW**

The Medic al Ass istance Program is establis hed purs uant to Tit le 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 states a 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 c laiming services thr ough the Department's Home and Communit y Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through t he federal Centers for Medicare an d Medicaid (formerly HCFA) to the Mich igan Department of Community Health (Department). Regional agenc ies, in this case the Region 2 AAA, function as the Department's administrative agency.

Waivers are intended to prov ide 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 comm unity 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 re imbursable under the State Plan. 42 CF R

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430.25(c)(2).

Home and community based services means—services not otherwise furnished under the State's Medicaid plan, that are fu—rnished under a waiv—er granted under the provisions of part 441, subpart G of this subchapter. 42 CFR 440.180(a).

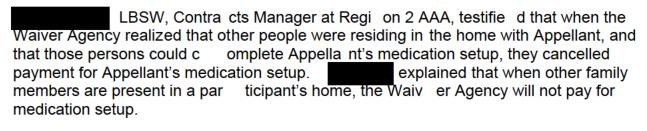
Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

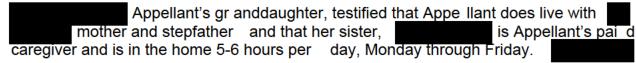
- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other parti al hos pitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) fo r individuals with chronic mental illness, subject to the conditions specified in paragr aph (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 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 c overed 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.

The Appellant bears the burden of proving, by a preponder ance of evidence, that payment for medication setup is medically necessary.





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testified that she is a regi stered r	nurse and that sh <u>e is</u>	paid by Compass	ionate Car
\$36.00 per week to setup Appell ar	nt's medication.	testified that	at her mother
and stepfather are unable to set up	o Appellant's medic at	ion because they \	vork full-time
and have their own health conc err	ns. testific	ed that her sister,	
Appellant's paid caregiver, cannot :	setu <mark>p A ppell</mark> ant's m	nedication because	she is not
	estified that Appellant		
pharmacy and that it would be a ha	ar dship for her mother	, stepfather, or sis	ter to drive to
the pharmacy each month to pick ι	up Appellant's medicat	tions.	

This ALJ finds the Waiver Agency pr operly cancelled pay ment for Appellant's medication setup. The Appellant failed to prove, by a preponderan ce of the evidenc e that payment for medication setup was medically necessary. Clearly, there are two other able bodied adults livin g with Appellant and one other able bodied adult paid to care for Appellant 5-6 hours a day, 5 days per week. It is not unreasonable to expect any of them to pick up Appellant's prescriptions at the pharmacy as needed and set up her medications to be taken each day.

## **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, dec ides that the MI Choice Waiv er agency properly canc elled payment for Appellant's medication setup.

#### IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc:

Date Mailed: 9/5/2012

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#### \*\*\* 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.