

**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:

**Docket No. 2012-64456 EDW
Case No. [REDACTED]**

[REDACTED]

Appellant

_____ /

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 [REDACTED]. [REDACTED], Appellant's spouse and durable power of attorney, appeared and testified on Appellant's behalf.

[REDACTED], Manager, MI Choice Waiver Services, Macomb-Oakland Regional Center, Inc., represented the Department's MI Choice Waiver Agency (MORC or Waiver Agency).

ISSUE

Did the Waiver Agency properly discontinue Appellant's medication reminders?

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 MORC to provide MI Choice Waiver services to eligible beneficiaries.
2. MORC must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy, and its contract with the Department.
3. Appellant is a [REDACTED] Medicaid beneficiary, born [REDACTED] (Exhibit 1, p 4).
4. Appellant has been enrolled in the MI Choice Waiver program since [REDACTED] and was served in his home until [REDACTED] when he was moved to an Adult Foster Care (AFC) home. (Testimony).

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5. Appellant can walk and feed himself, but he needs assistance with all other activities of daily living. (Testimony).
6. When Appellant transferred into the AFC home, the Waiver Agency continued to pay for medication reminders until it realized that the AFC home is required by licensure to handle its residents' medication needs. (Exhibit A, p 2)
7. On [REDACTED] the Waiver Agency notified Appellant that they would be discontinuing payment to the AFC home for medication reminders. (Exhibit A, p 1).
8. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received Appellant's request for a hearing. (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 MORC, 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 CF R
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 Medicaid Provider Manual provides, in part:

4.6 SERVICES IN LICENSED SETTINGS

Licensing rules for residential setting providers reflect an attempt to make residing in these settings much like it would be in a home. Providers of licensed residential settings must meet the standard of providing a non-institutional setting licensed by the State of Michigan.

Michigan Medicaid Provider Manual
MI Choice Waiver Section
October 1, 2012, p 17

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.

The Waiver Agency representative testified that once Appellant was transferred to an AFC home, the AFC home took over responsibility for Appellant's, and other residents', medication needs. The Waiver Agency representative indicated that as part of the AFC home's licensing agreement with the State, they are required to handle medication reminders. As such, the Waiver Agency representative testified that they had no choice but to terminate payment for this service.

Appellant's spouse testified that she was not aware that the medication reminders were no longer covered after the Appellant transferred to an AFC home. Appellant's spouse indicated that it does still seem that Appellant's care hours are low compared to when she cared for him at home. The Waiver Agency representative indicated that his hours are lower now because many of the tasks Appellant's spouse used to be reimbursed for are included in the base rate paid to the AFC home by Medicaid for Appellant's care.

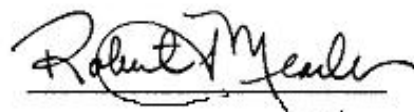
This ALJ finds that the MI Choice Waiver Agency properly discontinued Appellant's medication reminders. Appellant failed to establish by a preponderance of the evidence that medication reminders should have continued. Once Appellant was transferred to an AFC home, the AFC home became responsible for Appellant's medication management as part of the AFC home's licensing agreement with the State of Michigan.

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 discontinued Appellant's medication reminders when he transferred to an AFC home.

IT IS THEREFORE ORDERED that:

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



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

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cc:



Date Mailed: 10/23/2012

***** 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.