

**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. 2012-42441 EDW

██████████

██████████

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 ██████████ ██████████, Appellant's son and representative, appeared and testified on Appellant's behalf. Appellant ██████████ and her husband ██████████ appeared but did not testify.

██████████ Manager, MI Choice Waiver Services, ██████████ ██████████, represented the Department's MI Choice Waiver Agency (██████████ or Waiver Agency). ██████████, social worker, and ██████████, RN, supports coordinator, testified on behalf of the Waiver Agency.

ISSUE

Did the MI Choice Waiver Agency properly discontinue Appellant's Personal Emergency Response System (PERS) as not medically necessary?

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 ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. ██████████ 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 ██████████ year old (DOB 10/26/1937) Medicaid beneficiary. (Exhibit 1, p 4).

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4. Appellant is enrolled in the MI Choice Waiver program. (Testimony).
5. Appellant is diagnosed with rheumatoid arthritis. (Exhibit 1, p 9).
6. On ██████████, social worker ██████████ and ██████████, RN, conducted a reassessment of Appellant in her home. (Exhibit 1, pp 4-18). Following the assessment, ██████████ determined that Appellant no longer met the medical necessity criteria for a ██████████.
7. On ██████████, the MI Choice Waiver Agency provided Appellant with an adequate action notice discontinuing Appellant's ██████████ unit as not medically necessary. (Exhibit 1, p. 1).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for a hearing to contest the discontinuation of the ██████████. (Exhibit 2).

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

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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 Minimum Operating Standards applicable to the MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards for Personal Emergency Response System (PERS) provide, in part, the following:

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Operating Standards for the MI Choice Waiver Program

NAME	Personal Emergency Response System (PERS)
DEFINITION	PERS is an electronic device that enables waiver participants to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained

	professionals, as specified in Appendix B-2. Installation, upkeep, and maintenance of devices/systems are also provided.
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Minimum Standards for Traditional Service Delivery

* * * *

12. Waiver agents may authorize PERS units for persons who do not live alone if both the waiver participant and the person with whom they reside would require extensive routine supervision without a PERS unit in the home. For example, if one or both spouses are waiver participants and both are frail and elderly, the waiver agent may authorize a PERS unit for the waiver participant(s). Emphasis added.

MI Choice Operating Standards
September 15, 2011, pp 41-42

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.

Department Medicaid policy incorporates and elaborates on the federal regulation requirement that Medicaid-funded services be provided in an appropriate amount. The Medicaid Provider Manual sets out the medical necessity eligibility requirements, in pertinent part:

2.5.B. MEDICAL NECESSITY DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and

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- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.
- Documented in the individual plan of service.

Emphasis added.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, April 1, 2011, page 13.

██████████, social worker, testified that she conducted a reassessment of the Appellant on ██████████ along with ██████████, RN. ██████████ testified that on this visit, and on prior visits, Appellant was not wearing the ██████████ unit but kept it in a fish bowl filled with other items. ██████████ indicated that Appellant lives with her husband and that she is rarely left alone. ██████████ also testified that Appellant has both a cordless home phone and a cell phone that she keeps near her at all times. ██████████ testified that Appellant's husband is independent and does not require any supervision. According to ██████████, Appellant's daughter-in-law is her paid care giver and both Appellant's daughter-in-law and son provide extensive informal supports. ██████████ indicated that per her review of the Operating Standards for the MI Choice Waiver Program, Appellant does not currently meet the criteria for a ██████████

██████████, RN, testified that she accompanied ██████████ to Appellant's reassessment on ██████████. ██████████ testified that a ██████████ was not useful for Appellant from a medical standpoint because Appellant was unable to push the button on the ██████████ because of her arthritis. ██████████ testified that she would recommend that Appellant call 911 on her home or cell phone in case of emergency because the buttons on those devices are easier to push than the button on the ██████████

██████████, Appellant's son, testified that his father, Appellant's spouse, does leave the home on occasion to attend medical appointments and to go to the pharmacy and, as such, Appellant is sometimes left alone. ██████████ testified that his father has recently had a hip replaced and prostate surgery and does have to be out of the home on occasion for medical appointments. ██████████ testified that Appellant can push the button on the ██████████ later in the day after she takes her medication. ██████████ opined that the ██████████ was necessary in case of emergency on the occasions when Appellant was left alone.

This ALJ finds the MI Choice Waiver Agency properly discontinued the Appellant's ██████████ as not medically necessary. The Appellant failed to establish by a preponderance of the evidence that the ██████████ was medically necessary. As indicated in the above Operating Standards, "Waiver agents may authorize ██████████

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for persons who do not live alone if both the waiver participant and the person with whom they reside would require extensive routine supervision without a [REDACTED] in the home.” Here, Appellant lives with her spouse who is totally independent and, as such does not require extensive routine supervision. Therefore, Appellant is not eligible for a [REDACTED] under the [REDACTED]. Furthermore, it is clear from the evidence that Appellant had not been wearing her [REDACTED] unit and likely would not have the strength to push the button on the unit should the need arise. Therefore, a [REDACTED] unit is not medically necessary for Appellant because the unit would not “reasonably achieve its purpose”.

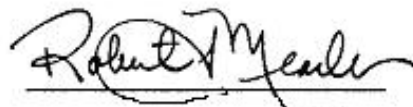
Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus the PERS unit cannot be authorized for the Appellant based upon the evidence of record. *42 CFR 440.230*.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly discontinued the Appellant’s PERS unit as not medically necessary.

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:

[REDACTED]

Date Mailed: 5-25-12

***** 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.