

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING 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. 2012-59701 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 granddaughter, appeared and testified on Appellant's behalf.

[REDACTED] LBSW, Contracts Manager, appeared and testified on behalf of the Department's Waiver Agency, Region 2 Area Agency on Aging (Region 2 AAA or Waiver Agency).

ISSUE

Did the Waiver Agency properly cancel [REDACTED] payment for Appellant's medication setup?

FINDINGS OF FACT

The Administrative Law Judge, based upon [REDACTED] the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Department contracts with Region 2 AAA to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. Region 2 AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a [REDACTED] year-old woman, born [REDACTED]. (Exhibit 1, p 3)
4. The Appellant lives in a single family home with her daughter and her daughter's husband. Appellant's granddaughter, [REDACTED] is her paid

Docket No. 2012-59701 EDW
Hearing Decision & Order

caregiver, and spends 5-6 hours per day in Appellant's home providing care. Appellant's granddaughter, [REDACTED] is paid to set up Appellant's medications once per week. (Exhibit A, Testimony)

5. Following a reassessment in [REDACTED] the Waiver Agency determined that there were persons living with Appellant who could do her medication setup. (Exhibit A, Testimony)
6. On [REDACTED] the Waiver Agency notified Appellant that it would be cancelling payment for medication setup, effective [REDACTED] (Exhibit A, p 9; Testimony).
7. On [REDACTED] the Michigan Administrative Hearing System received a request for hearing from the Appellant. (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 the Region 2 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*

██████████
Docket No. 2012-59701 EDW
Hearing Decision & Order

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 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.

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

██████████ LBSW, Contracts Manager at Region 2 AAA, testified that when the Waiver Agency realized that other people were residing in the home with Appellant, and that those persons could complete Appellant's medication setup, they cancelled payment for Appellant's medication setup. ██████████ explained that when other family members are present in a participant's home, the Waiver Agency will not pay for medication setup.

██████████ Appellant's granddaughter, testified that Appellant does live with ██████████ mother and stepfather and that her sister, ██████████ is Appellant's paid caregiver and is in the home 5-6 hours per day, Monday through Friday. ██████████

Docket No. 2012-59701 EDW
Hearing Decision & Order

testified that she is a registered nurse and that she is paid by Compassionate Care \$36.00 per week to setup Appellant's medication. [REDACTED] testified that her mother and stepfather are unable to set up Appellant's medication because they work full-time and have their own health concerns. [REDACTED] testified that her sister, [REDACTED], Appellant's paid caregiver, cannot setup Appellant's medication because she is not comfortable doing it. [REDACTED] testified that Appellant lives 14 miles from the nearest pharmacy and that it would be a hardship for her mother, stepfather, or sister to drive to the pharmacy each month to pick up Appellant's medications.

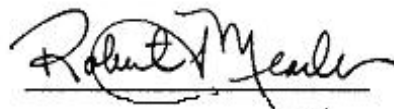
This ALJ finds the Waiver Agency properly cancelled payment for Appellant's medication setup. The Appellant failed to prove, by a preponderance of the evidence that payment for medication setup was medically necessary. Clearly, there are two other able bodied adults living with Appellant and one other 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, decides that the MI Choice Waiver agency properly cancelled 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:

[REDACTED]

Date Mailed: 9/5/2012

Tupacz, Marie Maryann
Docket No. 2012-59701 EDW
Hearing Decision & Order

***** 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.