

**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. 2012-59880 EDW

Case No. [REDACTED]

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED] Appellant [REDACTED] appeared and testified on her own behalf.

[REDACTED] LBSW, Waiver Services Manager, Region II Area Agency on Aging, appeared and testified on behalf of the Department's Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate the 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. Appellant is a [REDACTED] Medicaid beneficiary who is enrolled in the MI Choice Waiver program. (Exhibits A, B and testimony).
2. Appellant was receiving Community Living Supports (CLS) and home delivered meals. (Exhibits A, B and testimony).
3. On [REDACTED] the Waiver Agency sent the Appellant a Notice stating her home delivered meals would be terminated effective [REDACTED] because Appellant had CLS hours that include meal preparation and the home delivered meals was a duplication of services. The notice advised that counseling was terminated due to a 12 week limitation on counseling services. (Exhibit C).

4. On [REDACTED] MAHS received the Appellant's request for an Administrative Hearing regarding the termination of her home delivered meals. (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 MIChoice 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 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)*

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, MI Choice Waiver*, October 1, 2012, provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. [p. 1].

* * *

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections.

* * *

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 assisting, 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 cannot 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. [pp. 12-13].

* * *

4.1.L. HOME DELIVERED MEALS

Home Delivered Meals (HDM) is the provision of one to two nutritionally sound meals per day to a participant who is unable to care for their own nutritional needs. The unit of service is one meal delivered to the participant's

home or to the participant's selected congregate meal site that provides a minimum of one-third of the current recommended dietary allowance (RDA) for the age group as established by the Food and Nutritional Board of the National Research Council of the National Academy of Sciences. Allowances shall be made in HDMs for specialized or therapeutic diets as indicated in the participant's plan of service. A Home Delivered Meal cannot constitute a full nutritional regimen. [p. 14].

The issue appealed in this case is whether the Waiver Agency properly terminated the Appellant's home delivered meals. Appellant appealed the termination of her home delivered meals.

The Waiver Agency's witness ██████████ LBSW, testified the waiver agency was reviewing their cases for possible duplication of services. ██████████ stated Appellant was receiving 48 CLS hours over a seven day period of time. ██████████ stated according to the definition of CLS services, the Appellant's caregiver should be preparing meals for the Appellant and there was sufficient time authorized for the caregiver to prepare her meals. Accordingly, the home delivered meals the Appellant was receiving was a duplication of services.

██████████ referenced Exhibit E, Attachment H to the waiver's agency's contract with the Department to provide MI Choice Waiver services. (Attachment H is consistent with the policy contained in the Medicaid Provider Manual). ██████████ stated the waiver agency could not authorize both the CLS hours and the home delivered meals as this constituted a duplication of services.

The Appellant stated she has continued to receive her home delivered meals pending the appeal. Appellant stated she receives 1 meal per day 5 days per week. Appellant stated she doesn't understand how she is supposed to get food from the food bank, and she doesn't know if the food bank would have the foods she needs for her low salt diet.

Appellant further stated her helpers don't have enough time to prepare meals and put them in the refrigerator for her. The helpers come three times per day for about 7 hours per day. In the morning the worker washes her up, dresses her, gets her out of bed, takes her to the kitchen, makes her breakfast, and then allows her time to eat breakfast. The worker helps her brush her teeth, helps her put water in the coffee pot to make coffee, and does some laundry. The next worker comes and helps her go to the bathroom, and has to use the lift to get her up. The worker will wash dishes and make her lunch. The other worker comes at night to help her get ready for bed and may take her to the bathroom. This worker may also fix her a snack. Appellant stated the helpers are pretty busy the entire time.

The Waiver Agency provided sufficient evidence that its termination of the Appellant's home delivered meals was proper. A review of Attachment H and the corresponding policy contained in the Medicaid Provider Manual does indicate that CLS hours are to be used for such services as assisting the beneficiary with meal preparation. Appellant's own testimony demonstrated that the workers were preparing her breakfasts, lunches and sometimes snacks. Appellant was only getting 5 home delivered meals per week.

Obviously, someone was preparing the remainder of her meals. Despite the Appellant's assertions to the contrary, [REDACTED] established by a preponderance of the evidence that there was adequate time authorized for the Appellant's caregivers to prepare her meals, therefore, the home delivered meals constitute a duplication of services.

The policy in the Medicaid Provider Manual does not allow a duplication of services. The policy clearly provides that CLS hours cannot be authorized in circumstances where there would be a duplication of services. The converse would be true, that home delivered meals could not be authorized where there are adequate CLS hours authorized to allow the caregiver to prepare meals for the beneficiary. Since the evidence shows there were adequate CLS hours authorized for food preparation, the waiver agency acted properly in terminating the Appellant's home delivered meals.

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 the Appellant's home delivered meals.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: _____

***** 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

Benedict, Kathleen
Docket No. 2012-59880 EDW
Hearing Decision & Order

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

