

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) 373-4147

IN THE MATTER OF:

Docket No. 2013-34024 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 grandson and representative, appeared and testified on Appellant's behalf. Appellant gave testimony translated by her grandson/representative.

[REDACTED], Manager, MI Choice Waiver Services, [REDACTED], represented the Department's MI Choice Waiver Agency ([REDACTED] or Waiver Agency). [REDACTED], RN, supports coordinator, testified on behalf of the Waiver Agency.

ISSUE

Did the MI Choice Waiver Agency properly discontinue Appellant's 15 temporary additional units of homemaking services authorized for preparation of special 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. The Department contracts with [REDACTED] to provide MI Choice Waiver services to eligible beneficiaries.
2. [REDACTED] 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] year old (DOB [REDACTED]) Medicaid beneficiary. (Exhibit A, p. 5).

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4. Appellant is enrolled in the MI Choice Waiver program. (Exhibit A, p. 4).
5. Appellant was diagnosed with rheumatoid arthritis, diabetes and diverticulitis. (Exhibit A, pp. 11-12).
6. On [REDACTED], social worker [REDACTED] and [REDACTED], RN, conducted a reassessment of Appellant in her home. (Exhibit A, pp. 5-21). Following the assessment, [REDACTED] determined that Appellant needed 15 temporary additional units of homemaking services for preparation of special meals due to Appellant's diverticulitis. (Exhibit A, pp. 3-4).
7. On [REDACTED], Nurse [REDACTED] did a two-week follow-up with the Appellant with the assistance of Russian translator [REDACTED] and determined that the Appellant was still in need of the additional temporary meal preparation. (Exhibit A, p. 3 and testimony).
8. On [REDACTED] 2013, Nurse [REDACTED] learned through the assistance of [REDACTED] translator [REDACTED] that Appellant's diverticulitis was resolving and she was again eating regular food. [REDACTED] determined that the additional temporary meal preparation could be discontinued. (Exhibit A, p. 3 and testimony).
9. On [REDACTED], the MI Choice Waiver Agency provided Appellant with an advance action notice indicating that the Appellant's 15 temporary additional units of homemaking services for preparation of special meals would be discontinued effective [REDACTED]. (Exhibit A, p. 2).
10. 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 [REDACTED], function as the Department's administrative agency.

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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*, April 1, 2013, 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).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

* * *

4.1 COVERED WAIVER SERVICES

In addition to regular State Plan coverage, MI Choice participants may receive services outlined in the following subsections. (p. 9).

* * *

4.1.B. HOMEMAKER

Homemaker services include the performance of general household tasks (e.g., meal preparation and routine household cleaning and maintenance)

provided by a qualified homemaker when the individual regularly responsible for these activities, e.g., the participant or an informal supports provider, is temporarily absent or unable to manage the home and upkeep for himself or herself. Each provider of Homemaker services must observe and report any change in the participant's condition or of the home environment to the supports coordinator. (p. 9).

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, Mental Health and Substance Abuse, Beneficiary Eligibility Section*, April 1, 2013, p. 13, 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
- 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.

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██████████, RN, testified on ██████████ she took part in Appellant's routine 90-day reassessment. Nurse ██████████ learned the Appellant had an infection in her colon, i.e., diverticulitis and was having an acute episode. Appellant was on her second round of antibiotics and was in need of a special diet consisting of bland soups until her infection resolved to the point she could eat regular food. In order to accommodate Appellant's special diet ██████████ authorized 15 temporary additional units of homemaking services so the Appellant's homemaker would have sufficient time to prepare the necessary bland soups.

On ██████████, Nurse ██████████ did a two-week follow-up with Appellant with the aid of an interpreter and determined the Appellant still needed the special diet, so the additional homemaking units were continued. On ██████████, Nurse ██████████ did another follow-up with Appellant with the aid of the interpreter and determined the Appellant's infection was resolving and she was now eating regular food. Nurse ██████████ determined the additional homemaking units were no longer needed. ██████████ then sent Appellant an advance action notice indicating her 15 temporary additional units of homemaking services for preparation of her special meals would be discontinued effective ██████████.

Appellant's grandson and the Appellant, with her grandson interpreting for her, testified concerning the additional homemaking units. The Appellant's witnesses indicated they were not aware the additional homemaking units were only authorized on a temporary basis. Appellant recalled advising the nurse through the interpreter that her condition had not resolved. The Appellant's witnesses indicated she still needed the bland soup diet. Appellant's witnesses could not state when the Appellant reported to ██████████ that her condition had not resolved.

This ALJ finds the MI Choice Waiver Agency properly discontinued the Appellant's 15 temporary additional units of homemaking services as not medically necessary based on the information they received from the ██████████ follow-up. The Appellant failed to establish by a preponderance of the evidence the 15 temporary additional units of homemaking services were still medically necessary. Appellant could not remember when she reported her condition had not resolved thus indicating she still needed the special meals. It could just as easily have been during the February follow-up. Appellant's witnesses also suggested there may have been a failure in communication due to the interpreter speaking a different dialect.


Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services, thus the 15 temporary additional units of homemaking services could not be continued for the Appellant based upon the evidence of record. *42 CFR 440.230*. The Appellant's grandson was advised if there is new or additional information that may suggest the Appellant is in need of additional MI Choice services, the information needs to be provided to ██████████ and a new assessment could be done to establish whether there is medical necessity for additional services for the Appellant.

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 15 temporary additional units of homemaking services authorized for preparation of special meals as not medically necessary.

IT IS THEREFORE ORDERED that:

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



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

[REDACTED]
cc:

[REDACTED]

Date Signed: 5/7/2013

Date Mailed: 5/8/2013

***** 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.