

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) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2013-51095 EDW
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.* and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Supports Coordinator, represented the Department of Community Health's Waiver Agency, The ██████████ ("Waiver Agency" or "██████████"). ██████████, Waiver Manager, and ██████████, Quality and Training Manager, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency proper deny Appellant's request to have meals delivered from the dining hall of the facility she lives in to her room?

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 ██████ year-old female who has been diagnosed with general osteoarthritis; coronary heart disease; hypertension; a history of cancer; cataract, NOS; vertigo; goiter, NOS; and gout. (Respondent's Exhibit 1, pages 1, 8-9).
2. ██████████ is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Appellant has been enrolled in and receiving MI Choice waiver services through ██████████ since ██████████. (Respondent's Exhibit G, page 19).

4. Specifically, Appellant had been authorized for a combination of personal care services and homemaking services. Her care provider works three days a week. (Testimony of ██████████).
5. Appellant lives in an apartment in an assisted living facility. (Respondent's Exhibit 1, pages 1, 5).
6. The facility also has a dining hall and, at one point, the Waiver Agency was also providing delivery of meals from the dining hall to Appellant's room. (Testimony of Appellant; Testimony of ██████████; Testimony of ██████████).
7. After due notice, delivery of meals from the dining hall to Appellant's room was terminated on ██████████. On days when Appellant's personal care worker is working, that worker would continue to deliver the meals. (Testimony of ██████████; Testimony of ██████████).
8. Appellant did not appeal that termination. However, on ██████████, she requested that the service be reinstated. (Testimony of Appellant; Testimony of ██████████).
9. The Waiver Agency offered Appellant several options with respect to meals, including having an escort assist Appellant in going to the dining hall while Appellant used a wheelchair. Appellant declined all the suggested options. (Testimony of Appellant; Testimony of ██████████; Testimony of ██████████).
10. The Waiver Agency subsequently denied in writing Appellant's request to have meals delivered from the dining hall to her room. (Testimony of Appellant; Testimony of ██████████).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant regarding that denial. (Petitioner's Exhibit 1, page 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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case ██████████, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

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).]

In this case, as discussed above, Appellant has been receiving both personal care services and homemaker services through the self-determination program. With respect to such services, the Medicaid Provider Manual (MPM) states:

4.1.B. HOME MAKER

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.

4.1.C. PERSONAL CARE

Personal Care services encompass a range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the participant) or cueing to prompt the participant to perform a task. Personal Care services are provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law.

Services provided through the waiver differ in scope, nature, supervision arrangement, or provider type (including provider training and qualifications) from Personal Care services in the State Plan. The chief differences between waiver coverage and State Plan services are those services that relate to provider qualifications and training requirements, which are more stringent for personal care provided under the waiver than those provided under the State Plan.

Personal Care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. These services may also include assistance with more complex life activities. The service may include the preparation of meals but does not include the cost of the meals themselves. When specified in the plan of service,

services may also include such housekeeping chores as bed making, dusting, and vacuuming that are incidental to the service furnished or that are essential to the health and welfare of the participant rather than the participant's family. Personal Care may be furnished outside the participant's home. [MPM, April 1, 2013 version, MI Choice Waiver Chapter, pages 8-9.]

Appellant was also temporarily receiving delivery of her meals from the dining hall in her assisted living facility to her room. However, the Department terminated that temporary assistance in the past and denied Appellant's subsequent request to have the deliveries resume.

Beneficiaries are only entitled to medically necessary Medicaid covered services and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying her request. Here, Appellant has failed to meet that burden of proof.

As discussed by the Waiver Agency's witnesses, tray delivery from a dining hall to a beneficiary's room is not a covered waiver service in policy.

Additionally, given her living arrangement in an assisted living facility and the presence of a dining hall in that facility, Appellant does not meet the criteria for home delivered meals. The eligibility criteria for persons receiving home delivered meals through the waiver program include:

- a. The participant must be unable to obtain food or prepare complete meals.
- b. The participant does not have an adult living at the same residence or in the vicinity that is able and willing to prepare all meals.
- c. The participant does not have a paid caregiver that is able and willing to prepare meals for the participant.
- d. The provider can appropriately meet the participant's special dietary needs and the meals available would not jeopardize the health of the individual.
- e. The participant must be able to feed himself/herself.
- f. The participant must agree to be home when meals are delivered, or contact the program when absence is

unavoidable.

[Michigan Department of Community Health, Minimum Operating Standards for the MI Choice Waiver Program Services, Attachment H, Last Revised July 30, 2012, Page 26 (Respondent's Exhibit 3, pages 1).]

Here, Appellant is ineligible for home delivered meals as she is able to obtain food and access meals to the dining hall of the assisted living facility she lives in. To the extent that she has difficulty doing so, the Waiver Agency has attempted to accommodate Appellant's through waiver services that are available under policy. Such proposed accommodations have included switching to the onsite personal care worker or having escorts assist Appellant in getting Appellant to the dining hall while Appellant remains in a wheelchair. Appellant has declined all options presented to her.

Appellant's rejection of the proposed accommodations and her testimony during the hearing reflect the fact that, regardless of what assistance is offered, she only wants to have meals delivered to her room. Appellant specifically testified that, for a variety of reasons, she simply prefers to eat in her room and does not want to go to the dining room at all.

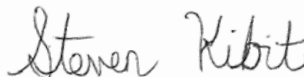
However, Appellant's preference and desires do not equal medical necessity. Appellant does not meet the criteria for home delivered meals and the Waiver Agency has offered covered services that are sufficient to meet Appellant's medical needs. To the extent Appellant wants the additional, unnecessary and non-covered service of having her meals brought to her room, the Waiver Agency properly denied her request.

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's request to have meals delivered from the dining hall to her room.

IT IS THEREFORE ORDERED that:

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



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


Docket No. 2013-51095 EDW
Decision and Order

Date Signed: 8/14/2013

Date Mailed: 8/14/2013

cc:



***** 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.