STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 14-009553 EDW

[redacted] [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*., and upon the Appellant's request for a hearing.

With due notice, a hearing was begun on [redacted], Appellant's son and legal guardian, appeared and testified on Appellant's behalf. [redacted], Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the [redacted] ("Waiver Agency" or [redacted], supports coordinator, also testified as a witness for the Waiver Agency.

However, while all parties were present and the record opened, the hearing was unable to proceed as scheduled due to the fact that Appellant's representative had repeatedly told [redacted] previously that he was withdrawing the appeal and, consequently, [redacted] was not prepared for the hearing. Accordingly, the matter was adjourned and a continued hearing was scheduled for [redacted].

On [redacted], the hearing was continued and completed. Appellant's son and legal guardian again appeared and testified on Appellant's behalf. [redacted] and [redacted] again appeared and testified on the behalf of the Waiver Agency.

ISSUE

Did the Waiver Agency properly suspend Appellant's services through the MI Choice Waiver program?

FINDINGS OF FACT

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

1. [redacted] is a contract agent of the Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.

2. Appellant's representative/legal guardian applied for waiver services through [redacted] on Appellant's behalf and, on [redacted], Appellant was enrolled in the MI Choice program. (Testimony of Appellant's representative; Testimony of [redacted].

3. At the time of her enrollment, Appellant was receiving Home Help Services ("HHS") through another Medicaid program and Appellant's representative was informed that Appellant could not be enrolled in both programs at once. (Testimony of Appellant's representative; Testimony of [redacted].

4. Appellant's representative elected to have Appellant enroll in the MI Choice program. (Testimony of Appellant's representative; Testimony of [redacted]

5. After enrollment, Appellant was approved for personal care services and home delivered meals. (Testimony of Appellant's representative; Testimony of [redacted]

6. However, [redacted] also advised Appellant's representative that all services were only temporarily approved and that the Michigan Department of Human Services ("DHS") would have to determine that Appellant was financially eligible for the waiver program in order for services to continue. (Testimony of [redacted].

7. Due to errors within the Waiver Agency, the home delivered meals were initially sent to the wrong address. (Testimony of Appellant's representative; Testimony of [redacted]

8. None of the approved personal care services were ever provided because, under the applicable policy, Appellant's representative could not be Appellant's service provider directly because he is also her legal guardian; the vendor agency that was to provide the services refused to hire Appellant's representative; and Appellant declined to have other workers from the vendor agency provide services. (Testimony of Appellant's representative; Testimony of [redacted]

9. The Waiver Agency never received notice that DHS had determined that Appellant was financially eligible for the program. (Testimony of [redacted].

10. On [redacted] the Waiver Agency sent written notice to Appellant, at an incorrect address, that her services would be suspended, effective [redacted], because it had never received notice of financial eligibility. (Testimony of [redacted].

11. On [redacted] the Michigan Administrative Hearing System (MAHS)

received the request for hearing filed in this matter. (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 [redacted], 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)

Here, Appellant was specifically approved for personal care services and home delivered meals. With respect to those services, the applicable version of the Medicaid Provider Manual (MPM) states:

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.

* * *

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.

MPM, July 1, 2014 version
MI Choice Waiver Chapter, pages 10, 14

However, while both personal care services and home delivered meals are covered waiver services, Appellant must still be eligible for those services on an ongoing basis. Regarding eligibility for the MI Choice program, the MPM states in part:

SECTION 2 - ELIGIBILITY

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish their financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).

- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program.

2.1 FINANCIAL ELIGIBILITY

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by the Michigan Department of Human Services (MDHS). As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is furnished to participants in the special home and community-based group under 42 CFR §435.217 with a special income level equal to 300% of the SSI Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend-down to achieve an enhanced financial eligibility standard.

MPM, July 1, 2014 version
MI Choice Waiver Chapter, page 1

In this case, the Waiver Agency suspended Appellant's services on the basis that it never received the required determination from DHS that Appellant was financially eligible for waiver services. The Waiver Agency's witnesses also testified that they informed Appellant about the lack of any determination and that they advised him that he should contact DHS directly.

Appellant's representative bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to suspend the services Appellant was approved for.

Here, the undersigned Administrative Law Judge finds that Appellant's representative has failed to meet that burden of proof and that the suspension must therefore be affirmed. While Appellant's representative raises issues with the Waiver Agency's handling of Appellant's services, such as sending meals to an incorrect address and failing to timely convey why the approved personal care services were not being provided, he failed to provide any evidence that Appellant is financially eligible for the program or that DHS has made a determination of financial eligibility. Pursuant to the above policy, Appellant must establish her financial eligibility for waiver services on an

ongoing basis and the Waiver Agency must rely on the determination of financial eligibility made by DHS. No such determination from DHS was provided in this case and, consequently, the Waiver Agency properly suspended Appellant's services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly suspended Appellant's services.

IT IS THEREFORE ORDERED that:

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

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

SK/db

cc: [redacted]

***** 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.