

**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

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**Docket No.** 14-005867 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 a request for a hearing filed on behalf of the Appellant/Petitioner.

After due notice, a hearing was held on ██████████. ██████████ appeared and offered testimony on behalf of the Appellant. ██████████, Data Support Supervisor, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency"). ██████████, Housing Specialist, also testified as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly deny the Appellant's request for his housing security deposit and first month's rent?

**FINDINGS OF FACT**

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

1. On ██████████, the Waiver Agency met with the Appellant and the Appellant's brother (██████████) to discuss temporary placement for the Appellant upon transition from a skilled nursing facility. The Appellant choose ██████████. (Testimony)
2. On ██████████, the Waiver Agency met with ██████████ staff to sign a financial agreement confirming that the MI Choice Waiver Program would incur a portion of the Appellant's monthly fees. (Testimony)
3. On ██████████, the Appellant's brother told the Waiver Agency there were problems with the Appellant's home residence. (Testimony)
4. On ██████████, the Appellant's brother called the Waiver Agency and indicated the problems with the Appellant's home residence were too

much and they would be looking for an apartment. (Testimony)

5. On ██████████, the Waiver Agency mailed to the Appellant numerous housing options. (Testimony)
6. On or around ██████████, the Appellant's brother left a voice message with the Waiver Agency. The message indicated the Appellant toured and liked Crawford Apartments and would like assistance with the security deposit. (Testimony)
7. On ██████████, the Waiver Agency told the Appellant's brother that assistance with the security deposit could only be granted if prior authorization was given. The Waiver Agency instructed the Appellant's brother to provide the contact information for the property manager at Crawford Apartments to coordinate payment. (Testimony)
8. On ██████████, the Appellant's brother told the Waiver Agency the Appellant would be moving into Crawford Apartments on ██████████. (Testimony)
9. On ██████████, the Waiver Agency received from the Appellant a request for reimbursement for the security deposit and first month's rent. (Testimony)
10. On ██████████, the Waiver Agency sent the Appellant an Adequate Negative Action notice. The notice indicated the Appellant's request for the security deposit and first month's rent was denied. (Testimony)
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by the Appellant.

### **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 A&D Home Health Care Inc., 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 generally 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)*

The array of services provided by the MI Choice program is **subject to the prior approval of CMS**. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

- indicated by the current assessment;
- detailed in the plan of service; and
- provided in accordance with the provisions of the approved waiver.

Among the specific services discussed in this case are Nursing Facility Transition (NFT). With respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

#### **4.1.N. Nursing Facility Transition**

Nursing Facility Transition (NFT) Services are non-recurrent expenses for participants transitioning from a nursing facility to a community setting. Allowable transition costs include the following:

- **Housing or security deposits: A one-time expense to secure housing or obtain a lease.**
- Utility hook-ups and deposits: A one-time expense to initiate and secure utilities (television and internet are not included).
- Furniture, appliances, and moving expenses: One-time expenses necessary to occupy and safely reside in a community residence (diversion or recreational devices are not included).
- Cleaning: A one-time cleaning expense to assure a clean environment, including pest eradication, allergen control, and over-all cleaning.
- Coordination and support services: To facilitate transitioning of participant to a community setting.
- Other: Services deemed necessary and documented within the participant's plan of service to accomplish the transition into a community setting. NFT services do not include monthly housing rental or mortgage expense, food, or regular utility charges. Costs for NFT services are billable upon enrollment into the MI Choice program.

*MPM, July 1, 2014 version  
MI Choice Waiver Chapter, pages 9, 13-14*

However, while NFT are Medicaid-covered services, Medicaid beneficiaries are still only entitled to medically necessary covered services for which they are eligible and services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See 42 CFR 440.230.

In support of its position, the Waiver Agency primarily relies on the Minimum Operating Standards for MI Choice Waiver Program Services and, as provided in the MPM, such standards do apply in this case:

#### **4.5 OPERATING STANDARDS**

MDCH maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service requirements. Billing codes and units are also defined in the document.

*MPM, October 1, 2013 version  
MI Choice Waiver Chapter, page 17*

Specifically, the Waiver Agency relies on portions of Attachment I of the Minimum Operating Standards:

#### **IV. SUPPORTS COORDINATION**

SC is the method that facilitates access to and arrangement of services and other forms of support needed and wanted by MI Choice participants. SCs work with participants to determine how and who will meet the participant's LTC needs. SCs assist participants in arranging for services and supports and monitor the quality of services received. SC includes valuing the cultural backgrounds of participants in the decision making process.

## **A. DEFINITION**

SC is a service designed to inform, assist, and coordinate a variety of home and other community-based services needed by elderly and other adults with disabilities aged 18 years and older who meet the NFLOC. SCs utilize all available services and supports before authorizing MI Choice services while assisting the participant in planning interventions. SCs work in partnership with participants to determine the interventions that will promote the participant's goals and facilitate the achievement of desired outcomes while addressing the participant's service and support needs.

SCs build participant choices and preferences into the SC process to assure a person focused, self-determination approach to the receipt of services and supports. SCs arrange formal services based upon participant choice and approval. The participant and their SCs explore other funding options and intervention opportunities when personal goals expand beyond meeting basic needs.

## **B. SUPPORTS COORDINATION SERVICE FUNCTIONS**

SCs provide all of the following functions:

### **1. Assessment**

The iHC Assessment System, consisting of the iHC and CAPs, is the basis for the MI Choice Assessment. SCs perform a comprehensive evaluation including assessment of the individual's: unique preferences; physical, social, and emotional functioning; medication; physical environment; natural supports; and financial status. The SC must fully engage the participant in the interview to the extent of the participant's abilities and tolerance.

Specific iHC items identify applicants who could benefit from further evaluation of particular problems and risks for functional decline. These items, called "triggers," link the iHC to a series of problem oriented CAPs. The CAPs are procedures that guide the SCs through further assessment and individualized service and support planning with participants.

## 2. Plan of Service Development

SCs and participants plan interventions from both allies and community resources that will meet each participant's identified needs. A written plan of service documents the issues, concerns, conditions, and specific supports and interventions needed. The SC and participant base the plan of service upon participant preferences and needs identified during a PCP assessment process.

\* \* \*

## D. INVOLVEMENT OF ALLIES

SCs work with participants to engage a team of family, friends, professionals, supports brokers, caregiver staff, and other allies to assist in the development of plans of service and to strengthen the skills of participants to address planned activities. Generally, MI Choice services are not used to replace existing unpaid supports, but rather bolster and help sustain ongoing allies' involvement.

## E. USE OF OTHER PAID SERVICES

**Before authorizing MI Choice services for a participant, the waiver agency must take full advantage of services and supports in the community that are available to the participant and paid for by other fund sources, including third party reimbursements and the Medicaid State Plan services.** MI Choice funding is the payment source of last resort. Two exceptions are Physical Disability Services (PDS) funds and OSA in-home services funds. These are extremely limited fund sources and would be quickly exhausted if used for MI Choice participants. (Note: An executive order cut PDS funds from the FY 2010 budget. MDCH does not expect the Governor to reinstate these funds for FY 2014.)

## F. THIRD PARTY LIABILITY (TPL)

The waiver agency pursues and secures all TPL sources possible. Waiver agencies make every effort to enroll and utilize dually certified Medicare/Medicaid providers for counseling, training, private duty, and nursing services to maximize Medicare payment for services also available through MI Choice. Other TPL sources include the Veteran's

Administration, Medicare skilled home health services, the Medicaid State plan, and other sources of LTC available to participants.

*Minimum Operating Standards for MI Choice Waiver Program Services, Attachment F, FY 2014, pages 14-15, 49*

The above standards relied upon by the Waiver Agency therefore do generally provide that MI Choice funding is the payment source of last resort and that the Waiver Agency must first take full advantage of other services and supports in the community that are available to Appellant and paid for by other fund sources, including third party reimbursements. Additionally, the above policy provides that MI Choice services may only bolster and sustain unpaid supports from allies.

The above standards also indicate prior approval was required in order to receive assistance with the first month's security deposit.

In the case at hand, the security deposit and first month's rent were paid by the Appellant's brother and no official request in writing was made for assistance until after the security deposit and monthly rent was paid. Based upon the evidence, it appears other funding was available and the prior authorization was not requested or granted until after the funding had been paid.

Accordingly, this Administrative Law Judge finds the Waiver Agency's argument and reliance on the above policy to be persuasive with respect to the Waiver Agency's actions.

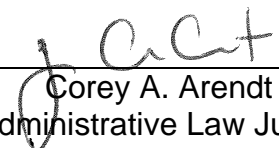
Therefore, for the reasons discussed above, this Administrative Law Judge finds the Waiver Agency acted appropriately in denying the request for assistance with a security deposit and first month's rent.

**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 the Appellant's request for assistance with a security deposit and first month's rent.

**IT IS THEREFORE ORDERED** that:

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

  
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Corey A. Arendt  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

CAA ██████████

Date Signed: August 27, 2014

Date Mailed: August 27, 2014

cc:

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**\*\*\* 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.