

**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.** 14-007023 EDW

██████████

██████████

██████████

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.

After due notice, a hearing was held on ██████████, Appellant's husband, appeared and testified on Appellant's behalf. ██████████, registered nurse/clinical manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████). Supports Coordinators ██████████ and ██████████ also testified as witnesses for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for an air purifier?

**FINDINGS OF FACT**

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

1. ██████████ 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 is enrolled in the MI Choice Waiver program and receives services through ██████████ (Respondent's Exhibit B, page 1).
3. On or about ██████████ the Waiver Agency received a request for an air purifier made on Appellant's behalf by her husband/representative. (Respondent's Exhibit B, page 1; Testimony of Appellant's representative; Testimony of ██████████)

4. In that request, Appellant's husband/representative asked for an air purifier because there may be an issue with the quality of the air in their home and it was causing him issues. (Respondent's Exhibit B, page 1; Testimony of Appellant's representative; Testimony of ██████████).
5. No issues or related diagnoses were identified involving Appellant and the request for an air purifier was being made for her husband/representative. (Respondent's Exhibit B, page 1; Testimony of Appellant's representative; Testimony of ██████████).
6. On ██████████, the Waiver Agency sent Appellant written notice that the request was denied on the basis that the air purifier was not medically necessary. (Respondent's Exhibit A, page 1).
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, page 1).
8. In that request, Appellant's husband/representative reiterated that the air purifier was medically necessary as he has had a persistent cough for months. (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)*

However, as described in the applicable version of the Medicaid Provider Manual (MPM), any service to be provided must be necessary for the participant:

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.

Services must not be provided unless they are defined in the plan of service and must not precede the establishment of a plan of service. Waiver agencies cannot limit in aggregate the number of participants receiving a given service or the number of services available to any given participant. Participants have the right to receive services from any willing and qualified provider.

MDCH and waiver agencies do not impose a copayment or any similar charge upon participants for waiver services. MDCH and waiver agencies do not impose a premium, enrollment fee, or similar cost-sharing arrangement on waiver participants.

Although MI Choice participants must have services approved by the waiver agency, participants have the option to select any participating provider, thereby assuring freedom of choice.

*MPM, April 1, 2014 version  
MI Choice Waiver Chapter, page 9*

Similarly, any approved goods or services must also be for the benefit of the participant:

#### **4.1.G. GOODS AND SERVICES**

Goods and Services are services, equipment or supplies not otherwise provided through either MI Choice or the Medicaid State Plan that address an identified need in the individual plan of services (including improving and maintaining the participant's opportunities for full membership in the community) and meet the following requirements. The item or service would:

- decrease the need for other Medicaid services,
- promote inclusion in the community, and
- increase the participant's safety in the home environment.

These goods and services are only available if the participant does not have the funds to purchase the item or service or the item or service is not available through another source.

Goods and Services are only approved by CMS for self-direction participants. Experimental or prohibited treatments are excluded. Goods and Services must be documented in the individual plan of services.

*MPM, April 1, 2014 version  
MI Choice Waiver Chapter, pages 11-12*

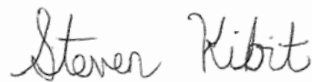
In this case, however, it is undisputed that Appellant does not need the air purifier and that the request was made in order to benefit her husband/representative. However, he is not enrolled in the MI Choice Waiver program and ██████████ cannot approve goods or services for his benefit. Accordingly, pursuant to the above policy, the Waiver Agency properly denied the 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 denial Appellant's request for an air purifier.

**IT IS THEREFORE ORDERED** that:

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



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

Date Signed: ██████████

Date Mailed: ██████████

SK/db

[REDACTED]

Docket No. 14-007023 EDW  
Decision and Order

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.