

**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) 334-9505

IN THE MATTER OF:

Docket No. 2014-13143 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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared and testified on his own behalf.

██████████, RN, BSN, Clinical Manager, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the ██████████

ISSUE

Did the MI Choice Waiver Agency properly deny the Appellant's request for the purchase of a ceiling mounted Hoyer lift?

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 ██████████ (or Waiver Agency) to provide MI Choice Waiver services to eligible beneficiaries.
2. ██████████ must implement the MI Choice Waiver program in accordance to Michigan's waiver agreement, Department policy, and its contract with the Department.
3. Appellant is a ██████ year old (██████████) Medicaid beneficiary. (Testimony).
4. Appellant is enrolled in the MI Choice Waiver program, and currently receives Medicaid funds to pay for self determination workers, ██████ hours per day ██████ days per week, and for an additional ██████ hours per month to be used in an emergency. Appellant also receives additional Medicaid

services through Community Mental Health (CMH) to allow him to get out into the community, for community interaction, going shopping, going to the movies, and to coach him how to better interact in the community. (Testimony).

5. On ██████████, the MI Choice Waiver Agency provided Appellant with an adequate action notice denying the Appellant's request for the purchase of a ceiling mounted Hoyer lift. (Exhibit A, pp. 3-4).
6. On ██████████, MAHS received Appellant's request for a hearing to contest the denial of the requested exercise equipment. (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 the ██████████, 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. [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

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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 Minimum Operating Standards applicable to the MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards for Specialized Medical Equipment and Supplies provide, in part, the following:

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Operating Standards for MI Choice Waiver Program

NAME	Specialized Medical Equipment and Supplies
DEFINITION	<p>Specialized Medical Equipment and Supplies includes devices, controls, or appliances that enable participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support or to address physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items.</p> <p><u>This service excludes those items that are not of direct medical or remedial benefit to the participant. Durable and non-durable medical equipment and medical supplies not available under the State Plan that are necessary to address the participant's functional limitations may be covered by this service. Medical equipment and supplies furnished under the</u></p>

	<p><u>State Plan must be procured and reimbursed through that mechanism and not through MI Choice.</u> All items must be specified in the participant's plan of service.</p> <p>All items shall meet applicable standards of manufacture, design and installation. Coverage includes training the participant or caregiver(s) in the operation and maintenance of the equipment or the use of a supply when initially purchased. Waiver funds may also be used to cover the maintenance costs of equipment.</p>
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Minimum Standards for Traditional Service Delivery

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4. The waiver agency and/or direct service provider must pursue payment by Medicare, Medicaid state plan, or other entities, as applicable before the waiver agency authorizes MI Choice payment. [Emphasis added].

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 is contained in the *Medicaid Provider Manual*. The *Medicaid Provider Manual, MI Choice Waiver*, §4.1.E *Specialized Medical Equipment and Supplies*, July 1, 2013, p. 11 provides:

4.1.E. SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES

Specialized Medical Equipment and Supplies includes devices, controls, or appliances which enable participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support or to address physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items.

This service excludes those items that are not of direct medical or remedial benefit to the participant. Durable and non-durable medical equipment and medical supplies not available under the State Plan that

are necessary to address the participant's functional limitations may be covered by this service. Medical equipment and supplies furnished under the State Plan must be procured and reimbursed through that mechanism and not through MI Choice. All items must be specified in the participant's plan of service.

All items shall meet applicable standards of manufacture, design and installation. Coverage includes training the participant or caregiver(s) in the operation and maintenance of the equipment or the use of a supply when initially purchased. Waiver funds may also be used to cover the maintenance costs of equipment. [Emphasis added].

The Appellant requested the purchase of a ceiling mounted Hoyer lift through the MI Choice waiver program. On ██████████, the MI Choice Waiver Agency sent Appellant an adequate action notice denying the purchase of a ceiling mounted Hoyer lift as there was not a medical reason established to obtain a lift; there was no evidence the lift was ordered by a physician; and, there was no evidence that current transfer was to and from the bed was problematic. The Appellant appealed the denial, and thus, bears the burden of proving, by a preponderance of evidence that the requested equipment should be provided for by the MI Choice Waiver Program.

The Waiver Agency presented credible evidence to establish that the information available to the Waiver Agency at the time of their denial did not establish a direct medical or remedial benefit to the Appellant. Appellant's request for hearing establishes the request for the ceiling mounted Hoyer lift was being requested because of an alleged weight gain on his part that was placing a strain on his caregivers who were currently providing manual transfers for the Appellant, i.e., it appears that the lift was being sought primarily for the benefit of his caregivers. The witness for the Waiver Agency refuted the Appellant's claim of a weight gain based on the reports by Appellant's Supports Coordinator ██████████, MSW. She further stated that there was no indication that the current method of transfers by his self-determination workers was problematic.

The Waiver Agency demonstrated that the Appellant had not shown that the requested equipment could not be obtained by a means other than an expenditure by the MI Choice Waiver Program, the payor of last resort. The Appellant has failed to follow through with Project Freedom an organization that loans ceiling mounted lifts to individuals such as the Appellant and installs them until no longer needed. The Waiver Agency also demonstrated that the Appellant has not considered the use of a regular Hoyer lift that normally would be ordered by the Appellant's physician and paid for by Medicaid under State Plan. The Appellant urged that his living space would not accommodate a standard lift, but the witness for the Waiver Agency disputed the Appellant's claim indicating that she had been in the Appellant's resident and she believed his living space would accommodate a standard lift.

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The Appellant's testimony expounded on the statements made in his request for hearing. He emphasized that the paid caregivers he lives with are aging and they are not as able to lift him and provide transfers to his wheelchair as often as he would like. He also indicated that he has a third paid caregiver who is not able to come around as often as he would like to do transfers. Appellant indicated that his healthcare providers have advised that it would be beneficial for him to sit up more in his wheelchair. Appellant is dependent on others to get him up, and he is not able sit up without the support of a body jacket.

This ALJ finds that the Waiver Agency properly denied the Appellant's request for the purchase of ceiling mounted Hoyer lift, as there was not a medical reason established to obtain a lift. Appellant has not ruled out alternatives available through other sources besides the MI Choice Waiver Program, the payor of last resort. It is also not entirely clear why the availability of the [REDACTED] hours per day for self determination workers (plus the availability of an additional [REDACTED] hours per month on an emergency basis), and the additional support being provided through CMH, does not afford the Appellant the flexibility to employ the necessary staff to provide additional transfers to his wheelchair as often as preferred. The Appellant has failed to establish by a preponderance of the evidence that the purchase of the requested ceiling mounted Hoyer lift, should be provided for under the MI Choice Waiver Program.

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 denied the Appellant's request for the purchase of a ceiling mounted Hoyer lift under the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

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

William D Bond

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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WDB/db

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.