

**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) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2014-35164 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. upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Attorney ██████████ appeared on Appellant's behalf. Appellant appeared as a witness.

██████████, RN, BSN, Clinical Manager, appeared and testified on behalf of the Department's MI Choice Waiver Agency, the ██████████. (██████ or Waiver Agency). ██████████, Supports Coordinator, also appeared as a witness.

ISSUE

Did the MI Choice Waiver Agency properly deny Appellant's request for medical transportation and additional non-medical transportation miles?

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 Medicaid beneficiary, born ██████████. (Exhibit A, Attachment E, p 1)
2. The Department contracts with the ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit 1, p 9; Testimony)
3. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Exhibit 1, p 9; Testimony)

4. Appellant is diagnosed with numerous medical conditions, including metabolic encephalopathy brought on by hypoxia, cumulative effects of life-long exposures to pesticides, PTSD, asthma, chest pain, and chronic left bundle branch block. Appellant cannot drive due to a seizure disorder. (Exhibit A, Attachment E; Testimony)
5. Appellant lives alone in an apartment and has few informal supports. (Exhibit A, Attachment A; Testimony)
6. In or around ██████████, Appellant requested additional miles be allotted each month for non-medical transportation. Appellant currently receives reimbursement for 200 miles per month. Appellant also continued to request medical transportation because she was having difficulty arranging medical transportation with the Department of Human Services (DHS). (Exhibit 1, pp 11-15; Testimony)
7. On ██████████, Administrative Law Judge ██████████ issued an order dismissing Appellant's previous appeal in which she requested medical transportation through the Waiver Agency. ALJ ██████████ dismissed the previous appeal because medical transportation is a State Plan service covered through DHS. (Exhibit 1, pp 4-7)
8. On ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing her that her request for medical transportation was denied because medical transportation is not a covered service under the Michigan Waiver Program. The Notice also informed Appellant that her request for additional miles per month for non-medical transportation was denied. The Notice contained Appellant's rights to a fair hearing. (Exhibit 1, pp 16-17; Testimony)
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for a hearing. (Exhibit C).

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 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 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)*.

With regard to Medical Transportation, the Waiver Agency's contract with the Michigan Department of Community Health provides, in pertinent part:

H. USE OF REGULAR MEDICAID STATE PLAN SERVICES

The waiver agency does not purchase MI Choice services to replace services currently offered under the regular Medicaid state plan. Examples include: medical transportation required under 42 CFR 431.53; transportation services offered under the State plan, defined at 42 CFR 440.1706; and medical supplies and medical equipment. The waiver agency does not pay additional monies above the Medicaid allowable cap for services covered by the regular Medicaid state plan.

*Attachment K to Contract
FY 2014, p 65 of 86
Attached in Exhibit 1, p 9*

With regard to non-medical transportation, the *Medicaid Provider Manual, MI Choice Waiver Chapter*, April 1, 2014, provides in part:

4.1.M. NON-MEDICAL TRANSPORTATION

Non-Medical Transportation Services are offered to enable waiver participants to access waiver and other community services, activities, and resources as specified in the individual plan of services. Whenever possible, family, neighbors, friends, or community agencies who can provide transportation services without charge must be utilized before MI Choice provides transportation services.

Non-Medical Transportation Services offered through MI Choice are in addition to medical transportation required under 42 CFR 431.53 and transportation services under the State Plan, defined at 42 CFR 440.170(a), and does not replace State Plan Services. MI Choice transportation services cannot be substituted for the transportation services that MDCH is obligated to provide under the listed citations. Such transportation, when provided for medical purposes, is not reimbursable through MI Choice. When the costs of transportation are included in the provider rate for another waiver service (e.g., Adult Day Health), there must be mechanisms to prevent the duplicative billing of Non-Medical Transportation Services.

With regard to GAP Services, the *Medicaid Provider Manual, MI Choice Waiver Chapter*, April 1, 2014, provides in part:

8.3.C. GAP SERVICES

Waiver agencies may authorize services for waiver participants to address situations that require immediate attention to alleviate barriers crucial to the participant's independence when no other resources, including waiver services, are available to address such needs. These are referred to as gap-filling services and are to be included in the participant's plan of service.

Gap-filling services are not eligible for federal financial participation (FFP) and so claims cannot be processed through CHAMPS.

Appellant requested that she receive medical transportation and additional miles per month for non-medical transportation. Appellant bears the burden of proving, by a preponderance of evidence that she is entitled to medical transportation and additional miles per month for non-medical transportation.

The Waiver Agency's Clinical Manager testified that medical transportation is a State plan service covered by the Department of Human Services (DHS) and the Waiver Agency is not able to cover the service. The Waiver Agency's Clinical Manager admitted that in the past the Waiver Agency had used Gap funding to pay for some of Appellant's medical transportation, but that the Waiver Agency is now adhering strictly to the contract it has with the Michigan Department of Community Health and has stopped using Gap funding for medical transportation. The Waiver Agency's Clinical Manager explained that Gap funding is very limited and should only be used for one time, emergency services, not for on-going medical transportation. As an example, the Waiver Agency's Clinical Manager testified that if a client's air conditioning went out, Gap funding might be used to replace it. The Waiver Agency's Clinical Manager also indicated that when Gap funding is used, a denial must first be received from Medicaid and/or Medicare.

With regard to Appellant's request for additional miles per month for non-medical transportation, the Waiver Agency's Clinical Manager testified that Appellant is currently allowed 200 miles per month, which the Waiver Agency believes should be sufficient to allow her to run errands and be involved in the community. The Waiver Agency's Clinical Manager testified that policy does not place a minimum or a maximum on non-medical transportation, but that its contract with MDCH indicates that allotments must

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be reasonable based on an individual's needs and preferences. To determine if Appellant's allotment of 200 miles per month was reasonable, the Waiver Agency's Clinical Manager reviewed 45 other Waiver Agency cases in which the clients receive non-medical transportation. The Waiver Agency's Clinical Manager discovered that the range of mileage allotted is between 10 and 200 miles per month, that the average allotment is 70 miles per month, and that 100 miles per month is most common. Based on this review, the Waiver Agency's Clinical Manager determined that the allotment for Appellant was reasonable.

The Waiver Agency's Support's Coordinator testified that she also reviewed Appellant's individual requests for transportation and agreed that 200 miles per month should be sufficient to meet Appellant's needs. The Waiver Agency's Support's Coordinator indicated that when she added up all of the mileage in Appellant's requests, the total came to 196 miles per month. The Waiver Agency's Support's Coordinator testified that she has encouraged Appellant to try to consolidate her trips to conserve mileage. The Waiver Agency's Support's Coordinator also indicated that in Appellant's most recent plan of care, Appellant has been authorized for two trips per month via Redi-Ride to volunteer at a cancer center in █████ Michigan and also one trip per month to a senior center in █████ Michigan. As such, the Waiver Agency's Support's Coordinator testified that Appellant would not have to use any of her allotted 200 miles per month for those trips.

Appellant testified that she uses her miles to go grocery shopping at the Walmart and Meijers in █████, Michigan about once per week, to Kohls in █████ once or twice per month for clothes shopping, to a resale shop in █████ or █████ once or twice a month, to Better Health in █████ once per month, to the █████ recycling center once per month, to Home Goods and Best Buy in █████ once per month, to Trader Joes in █████ once or twice per month, to the Mediterranean Market in █████ once or twice per month, and to the Cancer Center in █████ twice per month. Appellant testified that she needs to go to the specialty stores in order to obtain vitamins and soaps that are not available locally. Appellant indicated that one recent trip to █████ consumed 88 miles, or almost one-half of her monthly allotment of miles.

This ALJ finds the MI Choice Waiver Agency properly denied the Appellant's request for medical transportation and additional non-medical transportation. Clearly, medical transportation is a Medicaid state plan service covered by DHS and Appellant has an appeal pending with DHS regarding medical transportation. The fact that the Waiver Agency used Gap funding in the past to provide Appellant medical transportation does not bind the Waiver Agency to providing such transportation indefinitely. The contract the Waiver Agency has with the MDCH clearly states that the Waiver Agency cannot cover medical transportation and the Waiver Agency is now properly following that contract.

With regard to non-medical transportation, Appellant has failed to prove that the 200 miles allotted per month are unreasonable. Appellant's 200 allotted miles per month are at the top end of all allotments for Waiver Agency clients and, when the Waiver

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Agency's Support's Coordinator added up mileage for all of Appellant's requests, that total came only to 196 miles. In addition, since the denial in this matter was issued, Appellant has been authorized for two trips per month via Redi-Ride to volunteer at a cancer center in [REDACTED] Michigan and one trip per month to a senior center in [REDACTED] Michigan, so Appellant will not have to use any of her allotted 200 miles per month for those trips. If Appellant is careful and combines trips, 200 miles per month should be sufficient to meet her needs.

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 medical transportation and additional non-medical transportation.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is AFFIRMED.



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

cc:

[REDACTED]

RJM/[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.