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:

Docket No. 14-013528 EDW

[redacted], [redacted]

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on [redacted], Appellant's grandson and DPOA appeared and testified on the Appellant's behalf. [redacted] also testified for the Appellant.

[redacted], RN, Hearing Coordinator, [redacted] appeared on behalf of the Department's Waiver Agency. [redacted], RN, Nurse Supports Coordinator testified on behalf of the Department's Waiver Agency.

ISSUE

Did the Waiver Agency act properly in ordering that the Appellant's family and friends could no longer serve as paid caregivers?

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 Appellant is an [redacted]-year-old female (DOB [redacted]) Medicaid beneficiary who is enrolled in the MI Choice Waiver program. (Exhibit A and testimony).

2. On [redacted], Nurse Supports Coordinators completed a monthly call with Appellant's son/DPOA [redacted] advised the Appellant had been in the hospital about [redacted] weeks ago. The Supports Coordinator then confirmed that Appellant was hospitalized [redacted] at [redacted] and after discharge was in [redacted] from [redacted]4. (Exhibit A, Attachment 1, p. 9 and testimony).

3. [redacted] records show that the Appellant was admitted to the hospital from [redacted] through [redacted] and in a nursing/rehabilitation center from [redacted] through [redacted]. (Exhibit A, Attachment 6, pp 1-2 and testimony).

4. [redacted] sent documents/flow sheets to [redacted] indicating that he and his wife had provided care for the Appellant while she was in the hospital and nursing facility from [redacted], through [redacted] (Exhibit A, Attachment 1, pp. 1-11 and testimony).

5. On [redacted], the Waiver Agency sent the Appellant an Advance Action Notice stating that it had been determined there would be a change in her MI Choice Waiver Services, ordering that the Appellant's family and friends could no longer serve as paid caregivers. (Exhibit 5 and testimony).

6. On [redacted], MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 2).

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).

The *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2014, provides in part:

> **SECTION 1 – GENERAL INFORMATION**
>
> MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. [p. 1].

* * *

3.1 GENERAL PROVISIONS OF PARTICIPATION

There are a number of circumstances that play a role in the eligibility status of MI Choice participants. The following subsections define these impacts.

* * *

3.1.B. INSTITUTIONAL STAYS

There are occasions when a MI Choice participant requires a short-term admission to an institutional setting for treatment. The impact of such an institutional stay is dependent on the type of admission and the length of the stay.

A short-term hospital admission does not necessarily impact a participant's MI Choice enrollment status. The participant's supports coordinator must temporarily suspend the delivery of waiver services during the hospital stay to avoid unnecessary or redundant service delivery from the hospital or MI Choice, however, the supports coordinator is not required to remove the participant from MI Choice. A participant who is hospitalized for more than 30 days must have their enrollment suspended.

A participant admitted to a nursing facility for rehabilitation services or for any reason must be removed from MI Choice on the date prior to the nursing facility admission. The person may be re-enrolled into MI Choice upon discharge from the nursing facility, subject to the enrollment status of the agency. [p. 5, emphasis added].

* * *

SECTION 9 – PROVIDERS

Authorization for provision of services is the responsibility of the waiver agencies. They determine the status of the qualifications and certifications (if applicable) for all direct service providers, negotiate and enter into contracts with the providers, and reimburse providers.

It is possible for a provider to subcontract with, and be reimbursed directly by, MDCH. The circumstances necessitating such an arrangement are determined on a case-by-case basis by MDCH.

9.1 ENROLLMENT OF SERVICE PROVIDERS

Waiver agencies must use written contracts meeting the requirements of 42 CFR 434.6 to purchase services. Entities or individuals under subcontract with the waiver agencies must meet provider standards defined in the Minimum Operating Standards for MI Choice Waiver Program Services which is maintained by MDCH and attached to each annual waiver agency contract. Providers meeting the requisite waiver requirements are permitted to participate in the waiver program.

9.2 FAMILY MEMBERS AS SERVICE PROVIDERS

Waiver agencies may pay relatives of MI Choice participants to furnish services. This authorization excludes legally responsible individuals and legal guardians. The MI Choice participant must specify his/her preference for a relative to render services. The relative must meet the same provider standards as established for non-related caregivers. All waiver services furnished shall be included in the plan of service and authorized by the supports coordinator. The supports coordinator must periodically evaluate the effectiveness of the relative in rendering the needed service. If the supports coordinator finds that the relative fails to meet established goals and outcomes or fails to render services as specified in the plan of service, the supports coordinator must rescind the authorization of that relative to provide waiver services to the participant. When the supports coordinator finds the relative has failed to render services, payments must not be authorized. [p. 29, emphasis added].

The issue appealed is whether the Waiver Agency properly ordered that the Appellant's family and friends could no longer be paid caregivers. Appellant appealed the order.

The Waiver Agency's witness [redacted], RN, Supports Coordinator, established through credible testimony that on [redacted] during the regular monthly contact with [redacted], she learned that the Appellant had been in the hospital, at [redacted], approximately [redacted] e weeks prior to the call. [redacted] stated in [redacted] r she received a message from [redacted] their Office Manager that CHAMPS showed the Appellant had also been in a nursing home. [redacted] stated they looked at Champs and found the Appellant had been in the hospital from [redacted] through [redacted] and was in the nursing home from [redacted] through [redacted]

[redacted] stated there was a problem because [redacted] and his wife were billing for MI Choice Waiver services for taking care of the Appellant while she was in the hospital and the nursing home. According to the policy quoted above from the Medicaid Provider Manual, MI Choice services must be suspended while a beneficiary is in the hospital or in a nursing home to avoid a duplication of services. Furthermore, the acknowledgment [redacted] signed at the time the Appellant was enrolled in the Waiver program states that

he was given notice to contact the support coordinator when the Appellant was in the hospital or a nursing facility, which would have resulted in the suspension of those services and prevented the improper billing. [redacted] advised her supervisor [redacted] the MI Choice Waiver Program Director of the problem and [redacted] determined the Appellant's Waiver services would not be terminated, but that the Appellant's family and friends could no longer serve as paid caregivers due to the improper billing.

[redacted] testified at the hearing that he did not recall having a monthly contact with Appellant's prior supports coordinator [redacted] on [redacted] as indicated in the progress notes. (See Exhibit A, Attachment 1, p. 10 of 16). [redacted] complained that [redacted] did not do her job as a supports coordinator properly. He said she did not give him proper guidance or they wouldn't have submitted the billing sheets while the Appellant was in the hospital and nursing home. He said he was unable to contact [redacted] during the whole month of [redacted] did acknowledge that the Appellant went into the hospital on [redacted], but again indicated he did not talk to [redacted] on that date. [redacted] further acknowledged that the dates [redacted] gave for when the Appellant was in the hospital and in the nursing home were accurate. [redacted] acknowledged that he did not submit any faxes advising that the Appellant was in the hospital or in the nursing home. He admitted, however, that he did not read all the information that he received at intake, but he did sign the acknowledgment dated [redacted], Attachment 4 to the Department's exhibit.

[redacted], the wife of [redacted] also testified. [redacted] indicated that she and her husband were the paid caregivers for the Appellant and she was responsible for providing more hours of service than her husband. [redacted] said she and her husband filled out the billing sheets or flow sheets in found in Attachment 5 to the Department's exhibit. [redacted] indicated that her husband said they had to continue filling out the flow sheets. She further stated that the Appellant was very nervous around others so they went to the hospital and the nursing home to do their hours and to assist with the Appellant's care. [redacted] said that if they had known they weren't supposed to fill out the flow sheets they would not have done so. She said her husband told her he was almost sure they were supposed to fill the flow sheets out. [redacted] said they honestly did not know what to do, and did not want to be accused of stealing from the government.

The Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency did not act properly in ordering that Appellant's family and friends could no longer be paid caregivers under the MI Choice Waiver program. The testimony of the Appellant's witnesses did not establish that the Waiver Agency acted improperly in this case. The preponderance of the evidence shows that the Waiver Agency acted according to policy when it rescinded the authorization for the family to provide waiver services, when it was determined that they had failed to notify [redacted] when the Appellant went into the hospital and the nursing home as required by the program agreement.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency acted properly when it ordered that family and friends could no longer be paid caregivers for the Appellant under the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/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.