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. 15-010819 EDW

[redacted]

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 a request for a hearing filed on behalf of the Appellant/Petitioner.

After due notice, a hearing was held on [redacted] and continued on [redacted] the Appellant's stepfather appeared and offered testimony on the Appellant's behalf. [redacted] also appeared as a witness for the Appellant. [redacted] R.N., Supports Coordinator, appeared and testified on behalf of [redacted] on Aging ("Waiver Agency" or [redacted] Manager of New Business, appeared and testified on behalf of the [redacted]

ISSUE

Is the Appellant entitled to payment for services rendered on [redacted] and [redacted]?

FINDINGS OF FACT

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

1. As of [redacted], the Appellant was enrolled in and receiving MI Choice Waiver services from [redacted] (Testimony)

2. On or around [redacted] notified [redacted] that the Appellant was moving. At this time, [redacted] told the Appellant they were closing their case with the Appellant on [redacted] and contacted [redacted] to notify them of the Appellant's transfer to their area. (Testimony)

3. On [redacted] contacted [redacted] to schedule an initial assessment and enroll the Appellant. [redacted] and [redacted] were offered as possible dates. [redacted] elected for the assessment to take place on [redacted]. (Exhibit A, p 1; Testimony)

4. On [redacted] closed the Appellant's case. (Testimony)

5. On [redacted] conducted an initial assessment with the Appellant. (Exhibit A, p 8; Testimony)

6. On or around [redacted] contacted [redacted] and discussed the receipt of back pay for [redacted] and [redacted]. (Exhibit A, p 7; Testimony)

7. On or around [redacted] sent the Appellant a letter indicating the Appellant's caregiver would not receive payment for the dates of [redacted] and [redacted]. (Exhibit A, p 5; Testimony)

8. On [redacted], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by the Appellant. (Exhibit A, pp 9-11; Testimony)

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 AAA, 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)*

Portions of Attachment K address enrollment and coordination of services:

> **VII. Enrollment**
>
> After eligibility is determined, waiver agencies manage applicant enrollment into MI Choice. Wavier agencies develop written procedures for managing enrollment activities that are consistent with MDCH MSA policy.

A. First Day of MI Choice Enrollment

The waiver agency establishes MI Choice enrollment and termination dates. The agency is responsible for providing written notification to the local DHS office of these dates (see BEM 106) and DHS will confirm eligibility for the dates specified. The MI Choice enrollment date is on or following the assessment date. The enrollment date usually coincides with the date of assessment.

F. Transferring MI Choice Participants to another Waiver Agent

MDCH ensures participants have a choice of waiver agency, as available, to coordinate MI Choice services. A participant may choose to transfer enrollment from one waiver agency to another, as available within the region where he/she lives, or a participant may move to another region of the state. Waiver agencies are responsible for managing transfers of participants to other agencies or accepting transfers from another agency.

Requirements

1. Waiver agencies ensure that participants are transferred from one agency to another, preserving continuity of care and the integrity of the participant's preferences and person-centered plan.
2. The new waiver agency should perform an initial assessment and make a NFLOC determination. The new waiver agency must enter a NFLOC Determination in the online system for the transferred participant within 14 calendar days after the date of the participant's enrollment in the new waiver agency's program.
3. The new waiver agency for each transferred participant must not reimburse providers for delivered MI Choice services authorized by a previous waiver agency. The new waiver agency reviews plan of service activity and authorizes a new plan of service with the participant.

Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria Attachment K, FY 2015, pp 27, 37

* * *

[redacted] argued they are not responsible for paying for services performed on [redacted] and [redacted] as the Appellant was not enrolled in the MI Choice Program as an assessment had not yet been completed. And furthermore, could not reimburse the Appellant for MI Choice services that were authorized by a previous waiver agency ([redacted]

[redacted] indicated they stopped services as requested and alerted the new agency about the pending transfer. They argued they were not liable for reimbursement for services rendered after they had closed the Appellant's case when the Appellant moved away from their service area and they had informed the new agency of the pending transfer.

The Appellant argued the waiver agencies were responsible for managing the transfer and ensuring the preservation of the Appellant's continuity of care and the integrity of the Appellant's preferences and person-centered plan. And I agree.

The record does not reflect [redacted] did everything they could have to preserve the Appellant's continuity of care. Specifically, [redacted] did not inform the Appellant of the consequences of delaying the date of the assessment.

[redacted] argued they provided the Appellant with the ability to have the assessment on [redacted] and that payments would have been issued but for the Appellant's selection of [redacted] for the assessment. This is hardly a valid argument when it is the Waiver Agency who has the burden of preserving the continuity of care and not the Appellant according to the language found in Attachment K. Had [redacted] informed the Appellant of the consequences and the Appellant still selected [redacted] for an assessment, there would most likely be a different outcome in this matter. But that is not what happened.

Additionally, the argument that [redacted] cannot reimburse the Appellant for MI Choice services that were authorized by a previous waiver agency also holds very little weight as there were no approved services for [redacted] or [redacted] As of early [redacted] the prior case was closed and there were no approved services at that time.

Consequently, for the reasons discussed above, [redacted] is ordered to issue reimbursements for services rendered on [redacted] and [redacted] in accordance with the assessment and plan of care developed on [redacted]

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the entitled to payment for services rendered on [redacted] and [redacted].

IT IS THEREFORE ORDERED that:

[redacted] decision is **REVERSED**.

[redacted] is ordered to issue reimbursement for services rendered on [redacted] and [redacted] in accordance with the assessment and plan of care developed on [redacted].

Corey A. Arendt
Administrative Law Judge
For Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

CAA/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.