

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-006256 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 ██████████. Appellant appeared and testified on Appellant's behalf. Appellant was represented at the hearing by ██████████, ██████████, ██████████, ██████████, Manager of ██████████ and ██████████, RN, Reports Coordinator, appeared and testified on behalf the Respondent, ██████████ (██████████).

Respondent's Exhibit A pages 1-11; Respondent's Exhibit B pages 1-10 were admitted as evidence.

ISSUE

Did the ██████████ properly determine that Appellant's request for additional mileage should be denied?

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 ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. Appellant is Medicaid beneficiary, date of birth ██████████, who receives services through the ██████████.

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4. Appellant is diagnosed with numerous medical conditions, including metabolic encephalopathy brought on by hypoxia, cumulative effects of life-long exposures to pesticides, Post Traumatic Stress Disorder, asthma, chest pain, and chronic left bundle branch block. Appellant cannot drive due to a seizure disorder.
5. Appellant lives alone in an apartment and has few informal supports.
6. In or around [REDACTED], Appellant requested a blanket pre-approval for an unspecified number of trips (mileage) to DHS (now Department of Health and Human Services) per month.
7. On [REDACTED], [REDACTED] sent Appellant a Negative Action Notice – Denial of Services Request stating: Trips to DHS to make copies can be made during regular scheduled aide visits. SC did discuss with Appellant that on case by case basis transportation for trips to DHS for hearing or redetermination paperwork can be evaluated.
8. On [REDACTED], transportation for medical appointments was denied.
9. The MI Choice Program covers transportation for integration into the community and non-medical reasons only. Medical transportation is covered under the State Plan Medicaid for MI Choice participants.
10. Appellant's request for hearing was received by the Michigan Administrative Hearing System on [REDACTED].

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 requesting 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

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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*

The *Medicaid Provider Manual (MPM), MI Choice Waiver*, April 1, 2015, outlines the approved evaluation policy and the MI Choice waiting list policy:

4.1.H. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) facilitate an individual's independence and promote participation in the community. CLS can be provided in the participant's residence or in community settings. CLS include assistance to enable participants to accomplish tasks that they would normally do for themselves if able. The services may be provided on an episodic or a continuing basis. The participant oversees and supervises individual providers on an ongoing basis when participating in self-determination options. Tasks related to ensuring safe access and egress to the residence are authorized only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other relative, caregiver, landlord, community/volunteer agency, or third party payer is capable of or responsible for their provision. When transportation incidental to the provision of CLS is included, it shall not also be authorized as a separate waiver service for the participant. Transportation to medical appointments is covered by Medicaid through DHS.

CLS includes:

- Assisting, reminding, cueing, observing, guiding and/or training in household activities, ADL, or routine household care and maintenance.
- Reminding, cueing, observing and/or monitoring of medication administration.
- Assistance, support and/or guidance with such activities as:
 - Non-medical care (not requiring nurse or physician intervention) – assistance with eating, bathing, dressing, personal hygiene, and ADL;
 - Meal preparation, but does not include the cost of the meals themselves;
 - Money management;

- Shopping for food and other necessities of daily living;
- Social participation, relationship maintenance, and building community connections to reduce personal isolation;
- Training and/or assistance on activities that promote community participation such as using public transportation, using libraries, or volunteer work;
- **Transportation (excluding to and from medical appointments) from the participant's residence to community activities, among community activities, and from the community activities back to the participant's residence;** and
- Routine household cleaning and maintenance.

These service needs differ in scope, nature, supervision arrangements, or provider type (including provider training and qualifications) from services available in the State Plan. The differences between the waiver coverage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

CLS services cannot be provided in circumstances where they would be a duplication of services available under the State Plan or elsewhere. The distinction must be apparent by unique hours and units in the approved service plan.

MPM, MI Choice Waiver, Section 4.1.H
Community Living Supports, April 1, 2015, page 14-15

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.

MPM, MI Choice Waiver, Section 4.1.H
Community Living Supports, April 1, 2015, page 19

With regard to GAP Services, the *Medicaid Provider Manual, MI Choice Waiver Chapter*, April 1, 2015, 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.

The Minimum Operating Standards for MI Choice Waiver Program Services, pages 47-49, August 14, 2014, defines Non-Medical Transportation as:

Services offered to enable waiver participants to gain access to waiver and other community services, activities, resources, specified by the individual plan of service. Whenever possible, family, neighbors, friends, or community agencies that can provide transportation services without charge must be utilized before MI Choice provides transportation services.

The limitations to the minimum operating standards are as follows:

1. Where applicable, the participant must use Medicaid state plan, Medicare, or other available payers first.
2. The participant's preference for a certain provider or agency is not grounds for declining another payer in order to access waiver services.
3. Waiver agencies may not use waiver funds to purchase or lease vehicles for providing transportation services to waiver participants.
4. Waiver agencies shall not authorize MI Choice funds to reimburse caregivers (paid or informal) to run errands for participants when the participant does not accompany the driver in the vehicle. The purpose of the transportation service is to enable the MI Choice participants to gain access to waiver and other community services, activities and resources.

In the instant case, Appellant requested extra hours of transportation assistance because she needed to make numerous trips to Department of Health and Human Services to make copies and attend hearings but she was not specific as to dates and times for her transport.

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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.

Per the [REDACTED] witness testimony, Appellant is currently preapproved 10 hours of Community Living Services per month which includes 200 preapproved miles per month for current activities. She is able to submit prior authorization requests for increased services. [REDACTED] will not make blanket pre-approvals for unspecified transportation requests. [REDACTED] needs specific information so that it can make a determination as to what type of transportation is needed and whether the MI choice waiver covers the particular transportation. The community Supports Coordinator cannot approve non-specific ongoing blanket requests for services. Appellant's plan of care is reviewed every ninety days to make certain that the appropriate plan of care is in place.

The Waiver Agency's Clinical Manager testified that medical transportation is a State Plan service covered by the Department of Health and 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 DHHS indicates that allotments must 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.

In a prior hearing it was determined that the Waiver Agency's Support's Coordinator testified that she also reviewed Appellant's individual requests for transportation and

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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 Novi, Michigan and also one trip per month to a senior center in Howell, 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.

This ALJ found 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 DHHS and Appellant has an appeal pending with DHHS 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 DHHS 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 Agency's Support's Coordinator added up mileage for all of Appellant's requests, that total came only to 196 miles. In addition, since ██████████, Appellant has been authorized for two trips per month via Redi-Ride to volunteer at a cancer center in Novi, Michigan and one trip per month to a senior center in Howell, Michigan, so Appellant will not have to use any of her allotted 200 miles per month for those trips. (Michigan Administrative Hearings System, Docket No. 2014-35164, ██████████)

If Appellant is careful and combines trips, 200 miles per month should be sufficient to meet her needs. If Appellant needs additional mileage because of unusual circumstances she is able to make a specific request at any time which the Supports Coordinator will consider on an individual basis.

The Waiver Agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in accordance with Department policy; therefore, its actions were proper.

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**.



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

cc:



LYL/



Date Signed:



Date Mailed:



***** 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.