

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (517)-373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-021753 ICDE

██████████

██████████ ██████████

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 Appellant's request for hearing.

After due notice, an in-person hearing was held on ██████████ ██████████ ██████████ and ██████████ appeared on Appellant ██████████' behalf. ██████████ represented the Respondent ██████████ ██████████). Appellant; ██████████, Appellant's son, caregiver and legal guardian; ██████████, a Supervisor with ██████████; and ██████████, Associate Vice President of Healthcare Services with ██████████ testified as witnesses during the hearing.

At the conclusion of the hearing, the undersigned Administrative Law Judge issued a decision on the record and reversed Respondent's decisions in this matter due to improper notice and/or an improper assessment. The undersigned Administrative Law Judge also ordered that Respondent conduct a reassessment of Appellant's requests and provide proper, written notice of its subsequent decisions, with a decision on Appellant's request for additional personal care services rendered by ██████████ ██████████.

However, while the reversal is still appropriate for the reasons discussed below, the undersigned Administrative Law Judge is amending the order itself upon further review and in light of applicable federal regulations and the circumstances of this case, and will not order a specific deadline for completion of the reassessment.

ISSUE

Did the Waiver Agency properly deny Appellant's requests for durable medical equipment (DME) and additional personal care services?

FINDINGS OF FACT

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

1. Respondent is an ██████████) contracted by the Michigan Department of Health and Human Services (Department or DHHS) and the Centers for Medicare & Medicare Services (CMS) to provide covered services through the MI Health Link managed care program.
2. Appellant is a ██████████-year-old Medicaid/Medicare beneficiary who was enrolled into Respondent's MI Health Link program on ██████████. (Exhibit 1, page 29; Testimony of Appellant's guardian).
3. Previously, Appellant had been receiving approximately ██████ hours per month of Home Help Services (HHS) through the Medicaid State Plan. (Testimony of Appellant's guardian).
4. Following her enrollment into the MI Health Link managed care program, Appellant continued to receive approximately ██████ per month of personal care services. (Testimony of Appellant's guardian).
5. On ██████████ Appellant's ██████ Care Coordinator completed a Personal Care Services Assessment in Appellant's home. (Exhibit A, pages 1-2; Exhibit 1, pages 27-28).
6. During that assessment, the ██████ Care Coordinator ranked Appellant a "5" and concluded that she was totally dependent on others for the Activities of Daily Living (ADLs) of toileting, bathing, grooming, dressing, transferring, and mobility. (Exhibit A, pages 1-2; Exhibit 1, pages 27-28).
7. The ██████ Care Coordinator also ranked Appellant a "3" in the ADL of eating and concluded that Appellant required minimal hands-on assistance with that task. (Exhibit A, pages 1-2; Exhibit 1, pages 27-28).
8. The ██████ Care Coordinator further ranked Appellant a "5" and concluded that she was totally dependent on others for the Instrumental Activities of Daily Living (IADLs) of taking medications, meal preparation, shopping, laundry, and light housekeeping. (Exhibit A, pages 1-2; Exhibit 1, pages 27-28).
9. Using the rank for each activity against a Reasonable Time Schedule (RTS) provided to Respondent by Department, the ██████ Care Coordinator then calculated the minutes per day and hours per week of assistance that would be authorized for each task. (Exhibit 1, pages 22-23; 27).

10. For each activity, the exact recommended time for the ranking was used. (Exhibit 1, pages 22-23; 27).
11. That included no specific time authorized for assistance with taking medications as the RTS did not recommend any specific times and merely stated "There is no time limit in the ASM". (Exhibit 1, pages 23, 27).
12. Based on the RTS and rankings, Appellant was calculated to receive ████████ hours per week of personal care services. (Exhibit A, page 2; Exhibit 1, page 27).
13. The assessment did not include any findings or discussions regarding whether other factors, such as incontinence or obesity, should justify deviation from the RTS. (Exhibit A, pages 1-2; Exhibit 1, pages 27-28).
14. Respondent did round the calculation of ████████ hours per week up and subsequently approved ██████ hours per week of personal care services. (Testimony of ████████).
15. The amount approved was less than the amount of personal care services that Appellant was requesting. (Testimony of Appellant's guardian; Testimony of ████████).
16. However, Respondent did not send Appellant written notice of any denial. (Testimony of Appellant's guardian; Testimony of ████████).
17. At various times, Appellant also requested different types of DME, including a bariatric shower chair, a wedge pillow, a lift recliner, and a Hoyer Lift. (Testimony of Appellant's guardian; Testimony of ████████).
18. The requests for the wedge pillow, the lift recliner and the Hoyer Lift were initially denied. (Testimony of Appellant's guardian; Testimony of ████████).
19. Moreover, while the bariatric shower chair was initially approved, Appellant's guardian subsequently reported that it was too small and requested a larger chair, which was not provided. (Testimony of Appellant's guardian; Testimony of ████████).
20. Respondent did not send written notice to Appellant regarding any denials of requests for DME. (Testimony of Appellant's guardian; Testimony of ████████).
21. On ████████████████████, the Michigan Administrative Hearing System ("MAHS") received the request for hearing filed in this matter. (Exhibit 1, pages 5-10).

CONCLUSIONS OF LAW

Effective March 1, 2015, the Michigan Department of Health and Human Services (DHHS), in partnership with the Centers for Medicare & Medicaid Services (CMS), implemented a new managed care program called MI Health Link. This program integrated into a single coordinated delivery system all physical health care, pharmacy, long term supports and services, and behavioral health care for individuals who are dually eligible for full Medicare and full Medicaid. The goals of the program are to improve coordination of supports and services offered through Medicare and Medicaid, enhance quality of life, improve quality of care, and align financial incentives.

In implementing the program, MDHHS and CMS also signed a three-way contract with managed care entities called ██████████) to provide Medicare and Medicaid covered acute and primary health care, pharmacy, dental, and long term supports and services. Respondent is one of those ██████████

Services that may be provided through Respondent and the MI Health Link program include Medicaid State Plan services, including personal care services, and DME.

Appellant requested both personal care services and DME in this case, but Respondent denied those requests in part or in whole and Appellant now appeals the denials. In doing so, Appellant bears the burden of proving by a preponderance of the evidence that Respondent erred.

Given the record in this case, Appellant has met that burden of proof and Respondent's decisions must therefore be reversed.

Respondent first erred by failing to provide Appellant with proper written notice of any of its decisions. The three-way contract between Respondent, DHHS and CMS establishes that individual notice and appeal rights must be adhered to when any grievable or adverse action is taken by the ██████████ or contracted entities that would fall under the grievance or appeals processes available to individuals through Medicare and Medicaid guidelines. See Draft Contract, Issued ██████████, Section 2.11 Enrollee Appeals. Moreover, any notice of adverse action must comply with 42 CFR 438.404, which requires a written notice explaining, among other things, the action taken, the reason for the action, the enrollee's right to file an appeal, and the procedure for filing an appeal. See Draft Contract, Issued ██████████, Section 2.11 Enrollee Appeals; 42 CFR 438.404. Here, it is undisputed that Respondent never provided any written notice of its adverse actions and, consequently, the decisions must be reversed.

In addition to failing to provide proper notice of the denials, the ██████████ also erred in denying Appellant's request for additional personal care services by improperly relying solely on the RTS supplied by the Department. As provided in the parties' exhibits, the guidelines supplied to Respondent by the Department state that ADLs and IADLs are

first assessed by the ██████ Care Coordinator during the Personal Care Assessment and ranked on a five point scale, with 1 being totally independent and 5 requiring total assistance; and then the rank of the activity is used against a RTS table to determine the recommended time that activity should be assigned. See Exhibit B, pages 3-13; Exhibit 1, pages 13-23. However, the exhibits also clearly provide that a request for higher hours than shown on the RTS is permissible; that, with a few exceptions, the recommended times on the RTS are not maximums; an authorization can exceed the hours recommended when necessary; and the ██████ Care Coordinator must assess each task according to the actual time required for its completion. See Exhibit B, pages 11-15; Exhibit 1, pages 21-25. Specific reasons for using higher hours than those recommended include both incontinence and obesity. See Exhibit B, page 15; Exhibit 1, page 25.

Here, instead of actually assessing the time needed, it is clear that the ██████ Coordinator just improperly and mechanically applied the RTS after ranking Appellant and that the required individualized assessment was not completed. The exact recommended time for each ranking was authorized for every activity in this case, even when such an authorization is nonsensical. For example, the coordinator ranked Appellant a “5” for medication assistance, but authorized no time for assistance with that task and, instead, simply parroted the language of the RTS that there is no limit. Moreover, while Appellant’s is incontinent and obese, both of which are factors specifically identified in the guidelines as possible justifications for deviating from the RTS, the assessment did not include any findings or discussions regarding the effect of those factors in this case on the actual time it may take to complete tasks.

In light of the improper assessment and notice, Respondent’s decisions must be reversed. However, despite Appellant’s request to do so, the undersigned Administrative Law Judge will not substitute his judgment for Respondent’s or order that a specific number of personal care services be approved; and, as discussed on the record, will instead only order that Respondent reassess Appellant’s requests and issue proper notice of any subsequent decisions. Moreover, while the undersigned Administrative Law Judge previously ordered on the record that Respondent render a decision on Appellant’s request for additional personal care services by Wednesday, ██████████, he now finds, upon further review, that such a specific timeline is inappropriate in light of the applicable federal regulations and Departmental policy, see, e.g., 42 CFR 431.246, and the circumstances of this case, where Respondent may be relying on factors out of its control to complete the ordered reassessment, such as Appellant’s availability.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly denied Appellant’s requests for additional services.

[REDACTED]
Docket No. 15-021753 ICDE
Decision and Order

IT IS THEREFORE ORDERED that:

- The Respondent's decisions are **REVERSED**.
- Respondent must initiate a reassessment of Appellant's requests and provide proper, written notice of its subsequent decisions.

If you have any questions, please contact the Michigan Administrative Hearing System at (517) 373-0722.

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Mailed: [REDACTED]

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[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.