



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: August 26, 2016
MAHS Docket No.: 16-008345
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioner's request for a hearing.

After due notice, a hearing was held on August 23, 2016. The Petitioner appeared and offered testimony on his own behalf. [REDACTED], R.N., Special Program Manager, appeared on behalf of Region 2 (Department).

Exhibits:

Petitioner: None
Department: A – Hearing Summary

ISSUE

Did the Department properly suspend the Petitioner's Home and Community based services based on a divestment penalty?

FINDINGS OF FACT

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

1. Petitioner is a Medicaid beneficiary born [REDACTED]. (Exhibit A, p. 7; Testimony).
2. In 2014, Petitioner deeded his home to his daughter. (Exhibit A, p. 9; Testimony).
3. On May 2, 2016, the Department of Health and Human Services sent an email to the Petitioner indicating the Petitioner would serve a divestment penalty from June 1, 2016 through September 28, 2016 as a result of the Petitioner deeding his home to his daughter in 2014. (Exhibit A, p. 17; Testimony).

4. On May 5, 2016, the Department sent the Petitioner a letter indicating the Petitioner would be facing a divestment penalty and be ineligible for Department services during the divestment period. (Exhibit A, p. 17).
5. On June 2, 2016, the Department sent the Petitioner an Adequate Action notice indicating the Petitioner would be ineligible for CLS, PERS and PDN services as a result of the Petitioner's Medicaid being suspended. (Exhibit A, pp. 5, 6; Testimony).
6. Petitioner has a hearing pending regarding the divestment finding. (Testimony).
7. On June 29, 2016, the Michigan Administrative Hearings System (MAHS) received from the Petitioner a request for hearing.

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 Health and Human Services (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)*

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2015, which 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).

* * *

SECTION 2 - ELIGIBILITY

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program. (p 1, emphasis added).

* * *

Bridges Eligibility Manual (BEM) section 405 addresses Medicaid Divestments.

Medicaid (MA) ONLY

Divestment results in a penalty period in MA, not ineligibility. Divestment policy does not apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

Note: See Annuity Not Actuarially Sound and Joint Owners and Transfers in this item and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will not pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health.

MA will pay for other MA-covered services.

In this case, the Department indicated the Petitioner was serving a penalty period and as a result, MI-Choice waiver services were not available to the Petitioner.

Based upon a review of the policies found above, as well as the testimony and evidence presented by the parties, I find the Department acted in accordance with policy in suspending the Petitioner's Home and Community based services. The Petitioner was serving a divestment penalty and as such, Medicaid cannot pay for the requested services during the divestment penalty period.


DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department correctly suspended the Petitioner's Home and Community based services during the divestment penalty period.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.

CA/sb



Corey Arendt
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Community Health Rep

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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