



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: September 14, 2016
MAHS Docket No.: 16-009405
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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

After due notice, a hearing was held on 9/1/16. [REDACTED], represented Petitioner.

[REDACTED], Director of Care Management with [REDACTED], [REDACTED], subcontractor with the Michigan Department of Health and Human Services, appeared on behalf of the Respondent.

ISSUE

Did the CMH properly close Petitioner's chore 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. Petitioner is a 65 year old female Medicaid beneficiary.
2. At all relevant times, Petitioner has been a recipient of services from the CMH, including chore services, CLS hours and other services. (Exhibit A; Testimony).
3. The Information Center, Respondent, is under contract with the Department of Health and Human Services (MDHHS) to provide Medicaid covered services to people who reside in the CMH service area.
4. Petitioner lives with her spouse, who is gainfully employed with a full time position. (Exhibit A.1).
5. During a case review of Petitioner's benefits in April, 2016, the CMH determined that Petitioner was receiving chore services for lawn and snow

removal but failed to meet the Minimum Operating Standards for Chore Services and the eligibility requirements under the Michigan Medicaid Provider Manual (MPM). (Exhibit A.1).

6. On 4/4/16, CMH sent Petitioner an Advanced Negative Action Notice informing her that chore services of “grass cutting and snow shoveling” will be suspended “because there is someone in the household who is capable of performing this service or can pay for it.” (Exhibit A.4).
7. Petitioner had been receiving the chore services for approximately 3 years. (Testimony).
8. Petitioner’s request for hearing was received by the Michigan Administrative Hearing System on 7/5/16.

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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State

program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection(s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Health and Human Services (MDCH) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See *42 CFR 440.230*.

The CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

The Medicaid Provider Manual articulates Medicaid policy for Michigan. It states, in relevant part:

17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES

The authorization and use of Medicaid funds for any of the B3 supports and services, as well as their amount, scope and duration, are dependent upon:

- The Medicaid beneficiary's eligibility for specialty services and supports as defined in this Chapter; and

- The service(s) having been identified during person-centered planning; and
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter; and
- The service(s) being expected to achieve one or more of the above-listed goals as identified in the beneficiary's plan of service; and
- Additional criteria indicated in certain B3 service definitions, as applicable.

Decisions regarding the authorization of a B3 service (including the amount, scope and duration) must take into account the PIHP's documented capacity to reasonably and equitably serve other Medicaid beneficiaries who also have needs for these services. The B3 supports and services are not intended to meet all the individual's needs and preferences, as some needs may be better met by community and other natural supports. Natural supports mean unpaid assistance provided to the beneficiary by people in his/her network (family, friends, neighbors, community volunteers) who are willing and able to provide such assistance. It is reasonable to expect that parents of minor children with disabilities will provide the same level of care they would provide to their children without disabilities. MDCH encourages the use of natural supports to assist in meeting an individual's needs to the extent that the family or friends who provide the natural supports are willing and able to provide this assistance. PIHPs may not require a beneficiary's natural support network to provide such assistance as a condition for receiving specialty mental health supports and services. The use of natural supports must be documented in the beneficiary's individual plan of service.

Provider qualifications and service locations that are not otherwise identified in this section must meet the requirements identified in the General Information and Program Requirement sections of this chapter.

Developmental Disability Supports and Services
April 1, 2016, pp , 122-123
Emphasis added.

The CMH indicated at hearing that there is no issue here regarding Petitioner's CLS hours. These hours were not affected by the action here. The issue here centers on Petitioner's Chore Services.

Specifically, the MPM states:

4.1.G. CHORE SERVICES

Chore Services are needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Other covered services might include yard maintenance (mowing, raking and clearing hazardous debris such as fallen branches and trees) and snow plowing to provide safe access and egress outside the home. These types of services are allowed 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 or volunteer agency, or third party payer is capable of, or responsible for, their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Medicaid Provider Manual, MI Choice Waiver, 4.1.G, July 1, 2015

These standards are documented in the Minimum Operating Standards for MI Choice Waiver Program Services. (Attachment A, 1-2).

Here, CMH's witnesses testified that the lawn and snow removal services should not have been allowed in Petitioner's case as there is an individual in the home is capable and legally responsible to provide these services as a home owner.

Petitioner's representative argues that he is 57 years old with high blood pressure and that the Petitioner has been receiving these services for 3 years.

After a careful review of the substantial and credible evidence of records, the ALJ finds that the CMH properly proposed closure of Petitioner's Chore Services as there is an able bodied individual in the home legally responsible to provide the services. Federal and state law specifically excludes use of welfare monies to individuals who do not qualify for welfare benefits, or to provide benefits to individuals who do not qualify for welfare benefits such as Petitioner's spouse. Moreover, the argument that Petitioner should prevail because the Department granted benefits in error for 3 years is nonsense; the Petitioner cannot prevail based on an argument that she should continue to receive benefits when there was a mistake.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH properly proposed closure of the payment for lawn and snow removal services-chore services-

IT IS THEREFORE ORDERED that:

The CMH decision is hereby AFFIRMED.

JS/cg



Janice Spodarek

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

DHHS -Dept Contact

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]

Community Health Rep

[REDACTED]