



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: January 10, 2017
MAHS Docket No.: 16-016769
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on January 3, 2017. Petitioner [REDACTED] and his father [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Supports Coordinator; [REDACTED], Supports Coordinator Registered Nurse and [REDACTED], Waiver Manager appeared to represent the Department of Health and Human Services (Department) Waiver Agency, [REDACTED] (Waiver Agency).

ISSUE

Did the Waiver Agency properly suspend Petitioner's Community Living Supports (CLS) 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. The Department contracts with Respondent to provide MI Choice Waiver Services to eligible beneficiaries.
2. Petitioner is a Medicaid beneficiary.
3. Petitioner is a quadriplegic.
4. Petitioner was receiving services through the Medicaid Waiver Program.
5. On September 6, 2016, Petitioner enrolled in the Medicaid Waiver Program he or his representative and signed an acknowledgement form that confirms that he received the MI Choice Waiver Participant Handbook which states on page 5 that

participants must provide a 'safe and non-threatening' home which includes: Being respectful to workers who come into Petitioner's home, not verbally abusing people trying to help petitioner, and not use profane or offensive language toward the people who are trying to help Petitioner.

6. On November 10, 2016, the [REDACTED] sent Petitioner an Advance Negative Action Notice stating that Petitioner's case would be cancelled effective November 21, 2016 due to the threatening environment that exists in Petitioner's home.
7. On November 18, 2016, the Michigan Administrative Hearing System received a Request for Hearing from Petitioner to contest the negative action to cancel services.

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 Petitioner 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 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)*

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17.2 CRITERIA FOR AUTHORIZING B3 SUPPORTS AND SERVICES states:

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;
- The service(s) having been identified during person-centered planning;
- The service(s) being medically necessary as defined in the Medical Necessity Criteria subsection of this chapter;
- 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. MDHHS 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.

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The *Medicaid Provider Manual* articulates Medicaid policy for Michigan. Its states with regard to community living supports:

17.3.B. COMMUNITY LIVING SUPPORTS

NOTE: This service is a State Plan EPSDT service when delivered to children birth-21 years.

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

Assisting (that exceeds state plan for adults), prompting, reminding, cueing, observing, guiding and/or training in the following activities:

- meal preparation
- laundry
- routine, seasonal, and heavy household care and maintenance
- activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
- shopping for food and other necessities of daily living

CLS services may not supplant services otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973 or state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded

Home Help from MDHHS. CLS may be used for those activities while the beneficiary awaits determination by MDHHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the MDHHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the MDHHS assessment. (Emphasis Added)

- Staff assistance, support and/or training with activities such as:
 - money management
 - non-medical care (not requiring nurse or physician intervention)
 - socialization and relationship building
 - transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
 - participation in regular community activities and recreation opportunities (e.g., attending classes, movies, concerts and events in a park; volunteering; voting)
 - attendance at medical appointments
 - acquiring or procuring goods, other than those listed under shopping, and non-medical services
 - Reminding, observing and/or monitoring of medication administration
 - Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state plan coverage Personal Care in Specialized Residential Settings. Transportation to medical appointments is covered by Medicaid through MDHHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the beneficiary receiving community living supports.

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a MDHHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help.

Community Living Supports (CLS) provides support to a beneficiary younger than 18, and the family in the care of their child, while facilitating the child's independence and integration into the community. This service provides skill development related to activities of daily living, such as bathing, eating, dressing, personal hygiene, household chores and safety skills; and skill development to achieve or maintain mobility, sensory motor, communication, socialization and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the child. These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings. For children and adults up to age 26 who are enrolled in school, CLS services are not intended to supplant services provided in school or other settings or to be provided during the times when the child or adult would typically be in school but for the parent's choice to home-school.

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The MI Choice Medicaid Waiver Program requires participants to be respectful to workers who come into their homes. In the instant case, on November 17, 2016, a nurse was late to work. She apologized. She felt the atmosphere was not welcoming and determined that she would not return to Petitioner's home. On November 14, 2017 Petitioner told the nurse she could go when she arrived late. The nurse declined to continue to provide services. On November 14, 2017, the caregiver agency made allegations that Petitioner and his father were verbally abusive. On October 14, 2016, Petitioner told a caregiver she could leave because he did not feel she had good hygiene. On November 3, 2016, the caregiver contacted the Waiver agency stating that Petitioner told her she was 'fucking up his leg'. On November 6, 2016 another caregiver refused to go to the home because she stated that Petitioner's father told her to go, 'beach'. On November 4, 2016, the caregiver contacted the Waiver agency in tears and said she would not go back to Petitioner's because he called her the 'F' word. On November 8, 2016, the caregiver agency requested that the the Senior Alliance give all caregiver duties to someone else. During a conference call with the TSA admission nurse and her manager, Petitioner stated that he did not want any more 'motherfucking Africans' from [REDACTED].

The evidence on the record indicates that Petitioner was provided with seven different aides. All had either left crying or stating that they would not return to his home due to Petitioner's and his father's abusive language and threatening environment. [REDACTED] Manager (the caregiver agency) requested the Senior Alliance to find another vendor to care for Petitioner.

Petitioner testified that he never verbally abused anyone and he was never rude or profane. The nurses who were sent to take care of him were incompetent, disrespectful and late.

This Administrative Law Judge finds the evidence to be credible that Petitioner and his father were rude and profane to the various caregivers. Seven different caregivers requested not to return to Petitioner's home.

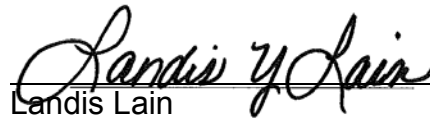
[REDACTED] has established by the necessary competent, substantial and material evidence on the record that Petitioner's Medicaid Waiver Home Care Services should be cancelled because Petitioner was rude, or verbally abusive to caregivers. [REDACTED] [REDACTED] action must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Senior Alliance properly cancelled Petitioner's Medicaid Waiver Home Care Services under the circumstances.

The Waiver Agency's Actions are **AFFIRMED**.

LL/sb



Landis Lain

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]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]