



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

██████████
██████████
██████████

Date Mailed: February 3, 2017
MAHS Docket No.: 16-016407
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on January 10, 2017. ██████████, Petitioner's son, appeared and testified on Petitioner's behalf. Petitioner was also present during the hearing. ██████████, registered nurse/supports coordinator, represented the Respondent ██████████. ██████████, Intake Supports Coordinator, testified as a witness for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request for a Personal Emergency Response System (PERS) unit?

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 sixty-six-year-old Medicaid beneficiary who has been diagnosed with chronic obstructive pulmonary disease; hypertension; arthritis; anxiety; depression; and diabetes mellitus. (Exhibit E, pages 13-14).
2. Starting in 2006, Petitioner was approved for MI Choice Waiver Services by the Waiver Agency for ██████████ County. (Exhibit E, page 15).
3. At that time, Petitioner's approved services included a PERS unit. (Testimony of Petitioner's representative).

4. In 2016, Petitioner moved into Respondent's service area and her case was transferred to it. (Testimony of Petitioner's representative).
5. On October 20, 2016, Respondent's Intake Supports Coordinator completed an initial assessment with Petitioner and Petitioner's representative in Petitioner's home. (Exhibit A, page 20; Exhibit E, pages 1-15).
6. During that assessment, the coordinator noted that "[Petitioner] lives alone and will need assistance to evacuate in the event of an emergency . . . [Petitioner] has access to her cordless phone; one is in the kitchen and one in the bedroom, and can call 911 when needed." (Exhibit E, page 9).
7. On October 27, 2016, Petitioner's representative telephoned Respondent; reported that Petitioner had fallen on October 20, 2016; and requested that Respondent provide her with a PERS unit. (Exhibit A, pages 14-15).
8. Petitioner was discovered on the floor by her representative after her nurse called him and reported that Petitioner was not answering the door. (Testimony of Petitioner's representative).
9. That same day, Respondent sent Petitioner written notice that her request for a PERS unit had been denied following a review of her long term care needs. (Exhibit D, page 1).
10. On November 14, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding that denial. (Exhibit 1, page 1).
11. On or about [REDACTED], Petitioner had to be hospitalized after falling in her home. (Exhibit A, page 4; Testimony of Petitioner's representative).
12. At that time, she had been able to telephone her son for help after she fell. (Testimony of Petitioner's representative).

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.

Petitioner is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The

program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case Respondent, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered through the waiver program include:

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)

Moreover, regarding waiver services in general and the specific service at issue in this case, the Medicaid Provider Manual (MPM) also provides in part:

SECTION 4 – SERVICES

The array of services provided by the MI Choice program is subject to the prior approval of CMS. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

- indicated by the current assessment;
- detailed in the plan of service; and
- provided in accordance with the provisions of the approved waiver.

Services must not be provided unless they are defined in the plan of service and must not precede the establishment of a plan of service. Waiver agencies cannot limit in aggregate the number of participants receiving a given service or the number of services available to any given participant. Participants have the right to receive services from any willing and qualified provider.

MDHHS and waiver agencies do not impose a copayment or any similar charge upon participants for waiver services. MDHHS and waiver agencies do not impose a premium, enrollment fee, or similar cost-sharing arrangement on waiver participants.

Although MI Choice participants must have services approved by the waiver agency, participants have the option to select any participating provider in the waiver agency's provider network, thereby assuring freedom of choice.

Where applicable, the participant must use Medicaid State Plan, Medicare, or other available payers first. The

participant's preference for a certain provider or agency is not grounds for declining another payer in order to access waiver services.

* * *

4.1.O. PERSONAL EMERGENCY RESPONSE SYSTEM

A Personal Emergency Response System (PERS) is an electronic device that enables a participant to summon help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is often connected to the participant's phone and programmed to signal a response center once a "help" button is activated. Installation, upkeep and maintenance of devices and systems are also provided. PERS does not cover monthly telephone charges associated with phone service.

The provider may offer this service for cellular or mobile phones and devices. The device must meet industry standards. The participant must reside in an area where the cellular or mobile coverage is reliable. When the participant uses the device to signal and otherwise communicate with the PERS provider, the technology for the response system must meet all other service standards.

*MPM, October 1, 2016 version
MI Choice Waiver Chapter, pages 10, 21*

Here, Respondent denied Petitioner's request for a PERS unit on the basis that it is not medically necessary.

In support of that decision, Respondent's Intake Supports Coordinator testified that she performed the initial assessment with Petitioner and her representative and that there was nothing reported during that assessment to indicate that Petitioner is currently a fall risk. Respondent's Intake Supports Coordinator also testified that Petitioner even specifically reported the ability to use a telephone and that she carried a telephone with her at all times. Respondent's Intake Supports Coordinator further testified that Petitioner's representative contacted her after the assessment to report that Petitioner had fallen, but that he also indicated that Petitioner had called him after she fell, which only confirms that a PERS unit is not necessary in her mind.

In response, Petitioner's representative testified that Petitioner has been disabled for fifteen to twenty years and that, due to her disabilities, her doctor has prescribed her a PERS unit. He also testified that Petitioner was using a PERS unit while she lived in

██████ County, but, when she moved and switched over to Respondent, Respondent failed to ask about any past falls. Petitioner's representative further testified that Petitioner does have a history of falls and has fallen recently in both October and November of 2016, with Petitioner incoherent because of a fever after the most recent fall and having to go to the hospital. He also testified that, though Petitioner was able to call him at that time, she cannot use a speed-dial or call anyone after a difficult fall, but that she may be able to use a simpler PERS unit. According to Petitioner's representative, Respondent's decision is based solely on money and that Petitioner again has a doctor's prescription for a PERS unit, but that Respondent has refused to consider it.

Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred in denying her request for a PERS unit. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the available evidence and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed. The mere fact that Petitioner was approved for a PERS unit in the past does not mean that one is medically necessary now and nothing was reported during the most recent assessment that indicated a need for a PERS unit. Petitioner had not had any recent falls; she is able to use a telephone and keeps a cordless phone on her at all times; and she did not have any medical condition that suggested that she is specifically a fall risk or that she could not use her cordless telephone to call for help. Moreover, while Petitioner's representative did report that Petitioner has fell after the assessment was completed, Petitioner was able to use a cordless phone that she keeps on her to call for help after one fall and, in the event she is unable to use the phone, there is nothing to suggest that she would be able to use a PERS unit instead. Accordingly, Petitioner has failed to show that the PERS unit is medically necessary.

To the extent Petitioner claims that there is additional or updated medical information that would demonstrate her need for the service, she is free to request a PERS unit again along with the relevant information. With respect to the decision at issue in this case however, Petitioner has failed to meet her burden of proof and the denial must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for a PERS unit.

IT IS, THEREFORE, ORDERED that:

- Respondent's decision is **AFFIRMED**.



SK/tm

Steven Kibit
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]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted] [Redacted]
[Redacted]
[Redacted]