

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2010-37653 EDW

██████████,

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. The hearing was continued and concluded on ██████████ due to losing the connection with the Appellant's phone. ██████████ appeared on his own behalf. ██████████, RN Program Director, and ██████████, RN Case Manager, both from ██████████, appeared on behalf of the Department of Community Health. ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health, (hereinafter Department).

ISSUE

Did the Waiver Agency properly terminate MI Choice Waiver because the Appellant could no be contacted for reassessment?

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 Appellant has been a participant in MI Choice Waiver Services since ██████████. (Exhibit 1, page 2)
2. Through the MI Choice Waiver program, the Appellant received PERS (lifeline) and liquid nutritional supplement. (Exhibit 1, page 2)
3. Supports Coordinators are required to provide follow up and monitoring, including contacting the participant at least every 30 days unless otherwise specified, and to complete an inperson reassessment every 180 days to maintenance level participants. (Exhibit 1, pages 7-9)

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4. The last reassessment of the Appellant's case was conducted on [REDACTED]. (Exhibit 1, pages 2 and 31-43)
5. A monthly contact with the Appellant was completed [REDACTED]. (Exhibit 1, page 29)
6. The waiver agency made several attempts to contact the Appellant by phone and by mail between [REDACTED]. (Exhibit 2, pages 15-16 and 28-29)
7. On [REDACTED], the waiver agency sent the Appellant a letter stating that a reassessment must be completed for MI Choice Waiver services to continue, instructing the Appellant to contact the waiver agency by [REDACTED] to avoid case closure. (Exhibit 1, page 15)
8. On [REDACTED], the waiver agency sent the Appellant another letter stating that waiver services will close effective [REDACTED] because there has been no response to attempts to contacts the Appellant and the required reassessment is overdue. (Exhibit 1, page 14)
9. On [REDACTED], the waiver agency disenrolled the Appellant from waiver services. (Exhibit 1, page 13)
10. On [REDACTED], the Appellant contacted the waiver agency regarding the termination of services. (Exhibit 1, page 28)
11. On [REDACTED], the waiver agency sent the Appellant a second hearing request form. (Exhibit 1, page 12)
12. The Appellant's request for a formal, administrative hearing was first received on [REDACTED] and was forwarded back to the appeals division for the Michigan Department of Community Health on [REDACTED].

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 eligibility for 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

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Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (*42 CFR 430.25(b)*)

The MDCH Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria Attachment K outlines the follow up/ monitoring and reassessment requirements:

XI. FOLLOW-UP AND MONITORING

Follow-up and monitoring include contact between SCs, the participant and/or service providers to ensure that providers deliver services as planned and to the satisfaction of the participant. SCs use follow-up and monitoring to evaluate the timeliness, appropriateness, and quality of services implemented under the POC. SCs monitor all services implemented on behalf of participants as a function of care planning and participant reassessment activities.

Requirements

1. SCs provide follow-up and monitoring to MI Choice participants. Waiver agents maintain local policy and procedures assuring that participants have a continuous opportunity to provide feedback about services, supports, interventions, and/or treatments.
2. SCs contact participants at least every 30 days, unless otherwise specified by the participant, to monitor the participant's health and welfare, the provision of services, and the participant's satisfaction

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with the current POC. SCs and participants can adjust services at this time to serve the participant better.

3. SCs contact the participant and/or service agency within fourteen (14) days of the agreed upon start date of service implementation to verify that the provider delivers service in the manner arranged and to the satisfaction of the participant.
4. SCs and other waiver agent personnel document all follow-up and monitoring in the participant case record.
5. SCs record changes in services negotiated during follow-up and monitoring on behalf of participants in the participant POC.
6. SCs provide oral and/or written feedback to providers regarding services furnished according to the POC when the SCs receive complaints from participants.
7. When SCs attempt to arrange a service that cannot start within 30 days, they must contact the provider agency every 30 days until a provider can implement the service.

XII. REASSESSMENT

Reassessment provides a scheduled, periodic in-person reexamination of participant functioning for the purpose of identifying changes that may have occurred since the initial assessment or previous reassessment and to measure progress toward meeting specific goals outlined in the participant POC. Either an interdisciplinary SC team or an individual SC can perform reassessments. A team is not required to perform reassessments.

Requirements

1. SCs provide an in-person reassessment to active (see section XIII) program participants within 90 days of assessment or previous reassessment or when there are significant changes in the participant's health or functional status, or significant changes in the participant's network of allies (i.e. death of a primary caregiver).
2. SCs provide an in-person reassessment to maintenance level (see section XIII) program participants within 180 days of assessment or previous reassessment or when there are significant changes in the participant's health or functional status, or significant changes

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in the participant's network of allies (i.e. death of a primary caregiver).

3. The reassessment is comprehensive and includes review of the same items evaluated during the initial assessment.
4. The case record must reflect documentation that the participant continually meets the NFLOC. The record must indicate the appropriate door through which the participant meets the NFLOC criteria based upon the current assessment.
5. The SC reviews reassessment findings with the participant. The SC and the participant update the POC, if necessary, based on mutually agreed service changes. The participant approves each service change. The SC send appropriate notice to the participant and/or obtains a clearly written signed statement from the participant that acknowledges the agreed upon change before the service changes can be put in place.
6. The SC includes reassessments in the participant case record.

MDCH Contract Requirements for Supports Coordination
Service Performance Standards and MI Choice Program
Operating Criteria Attachment K, Pages 58-60
(Exhibit 1, pages 7-9)

In the Appellant's case, the last reassessment was performed on [REDACTED]. (Exhibit 1, pages 31-43) The case notes indicate it has been difficult to complete reassessments in a timely manner due to limited availability, but that the Appellant would remain in the program and will be seen on a maintenance status. (Exhibit 1, page 30) Under the above cited policy, the waiver agency contact the Appellant at least every 30 days complete a reassessment within 180 days, which would be around [REDACTED].

The waiver agency made monthly contact attempts, but were only successful in [REDACTED]. (Exhibit 1, pages 28-29) They also attempted to schedule the in-person reassessment in [REDACTED] but were unable to reach the Appellant. (Exhibit 1, page 28) On [REDACTED] the waiver agency sent the Appellant a letter stating that a reassessment must be completed for MI Choice Waiver services to continue, instructing the Appellant to contact the waiver agency by [REDACTED] to avoid case closure. (Exhibit 1, page 15) On [REDACTED], the waiver agency sent the Appellant another letter stating that waiver services will close effective [REDACTED] because there has been no response to attempts to contacts the Appellant and the required reassessment is overdue. (Exhibit 1, page 14)

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The Appellant did not contact the waiver agency by [REDACTED]; therefore the waiver agency disenrolled the Appellant from waiver services. (Exhibit 1, page 13) The Appellant testified that he had been in and out of town for several months because his mother died.

While this ALJ is sympathetic to the Appellant's position, she does not have authority to override or disregard the policy set forth by the Department. The waiver program requires monthly contacts and a reassessment at least every 180 days for participants in maintenance status. The waiver agency made reasonable attempts to contact the Appellant, both by telephone and by mail, between [REDACTED]. (Exhibit 1, page 28) Prior to disenrolling the Appellant from waiver services on [REDACTED], the waiver agency sent two notices warning that his case would close unless the reassessment could be completed. The Appellant did not contact the waiver agency until [REDACTED] two weeks after services were terminated.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Waiver Agency properly terminated the Appellant's MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 8/27/2010

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***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 State Office of Administrative Hearings and Rules for the Department of Community Health 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.