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. 2010-7846 EDW

[redacted]

Appellant

_____/

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 Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted], appeared on his own behalf. Appellant's MI Choice Waiver chore provider, [redacted], was present and gave testimony.

[redacted]r, represented the Department's MI Choice waiver agency, [redacted] Agency [redacted], waiver agency or AAA). [redacted]r; [redacted], appeared as witnesses on behalf of [redacted].

ISSUE

Did the Department's Waiver Agency properly terminate Appellant from the MI Choice Waiver program?

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 the waiver agency to provide MI Choice waiver services to eligible beneficiaries.

2. The Appellant is a [redacted]-year-old man. The Appellant's diagnosis includes heart disease and diabetes. (Exhibit 1, pp 8-9). At the time of the reassessment the Appellant smoked one pack of cigarettes per day against his doctor's recommendation and he used Vicodin. (Exhibit 1, pp 7, 10).

3. On [redacted], the waiver agency conducted a reassessment of Appellant's MI Choice waiver services. (Exhibit 1). During the reassessment the waiver agency care management team observed the Appellant being able to ambulate independently and exhibiting intact decision-making skills. The waiver agency care management team was told by the Appellant that he can drive himself and that he tries to walk around outside as much as possible. (Exhibit 1).

4. During the [redacted] reassessment the waiver agency care management team asked Appellant questions related to the nursing home seven-door, level of care determination tool. The Appellant answered the questions competently and indicated he can perform all of his personal care, manages his finances and can drive. (Exhibit 1).

5. Based on their observations and on the information told by the Appellant, the waiver agency care management team determined the Appellant did not meet any of the seven-door level of care determination tool criteria and therefore did not meet the level of nursing home skilled care. (Exhibit 1).

6. On [redacted], the waiver agency sent an Advance Action Notice to the Appellant notifying him of a termination of MI Choice waiver services because he was "not medically eligible for waiver services." (Exhibit 4). The notice indicated the waiver agency would refer Appellant to the Department of Human Services Home Help program. (Exhibit 4).

7. On [redacted], the waiver agency notified the Appellant's [redacted] Home Help Program worker [redacted], that the Appellant was not medically eligible for the MI Choice waiver program. (Exhibit 3, page 3).

8. On [redacted], the State Office of Administrative Hearings and Rules received a request for hearing from the Appellant. (Exhibit A).

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 was receiving 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 (CMS, formerly HCFA) to the Michigan Department of Community Health (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).*

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)).

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (42 CFR 440.180(a)).

The state of Michigan utilizes the seven-door level of care determination tool to assess whether an individual needs a nursing home level of care. The evidence in this case unequivocally demonstrates that the Appellant does not need a nursing home level of care.

During the hearing the MI Choice waiver agency witnesses testified that at the [redacted], reassessment they observed the Appellant being able to ambulate independently and exhibiting intact decision-making skills. The waiver agency care management team was told by the Appellant that he can drive himself and that he tries to walk around outside as much as possible. (Exhibit 1). The waiver agency care management team was told by the Appellant that he can perform all of his personal care, manages his finances and personal affairs, and can drive. (Exhibit 1).

During the [redacted], reassessment the waiver agency care management witnesses asked Appellant questions related to the nursing home seven-door level of care determination tool. The waiver agency care management witnesses explained that Appellant had clear comprehension and expression as he answered all of their questions. Because the Appellant had none of the door two cognitive deficits, he was not eligible for the waiver through door two.

The waiver agency care management witnesses stated the Appellant said he can perform all of his personal care, manage his finances and can drive. The waiver agency care management witnesses noted he knew how to test his blood sugar and administer his insulin, and he did not have any specialized therapies or medical treatments indicated in the level of care determination tool. Because he did not meet the criteria of

doors 1, and 4-6, the waiver agency care management team found he was not eligible for the waiver program through any of those doors. (Exhibit 1, pages 13-15).

The waiver agency care management witnesses noted that the Appellant would be independent without the level of assistance of nursing home skilled care or the MI Choice waiver services; therefore he is not eligible through door 7.

Based on their observations and on the information told by the Appellant, the waiver agency care management team determined the Appellant did not meet any of the seven-door level of care determination tool criteria, he did not meet a nursing home level of care, and therefore the Appellant's MI Choice waiver services were terminated. (Exhibit 1, page 15).

The Appellant testified at the hearing that about a week prior to hearing his blood sugars and blood pressure had gotten out of control. This Administrative Law Judge explained to the Appellant that the jurisdiction of the hearing was limited to the information the waiver agency was provided at the time of the November reassessment and the decision the waiver agency made based on the information provided by the Appellant. The Appellant competently described to the Administrative Law Judge how he checks his blood sugars and administers his own insulin. The assistance described by the Appellant and the waiver agency as what he needs is not the array of skilled nursing services anticipated as the intent of the MI Choice waiver. The lower level of services indicated as desired perhaps might be provided through other community-based services such as the DHS Home Help Program.

The waiver agency was proper to terminate Appellant from the MI Choice waiver.

It is unclear how an individual who is able to provide his own personal care, medications, drive, take frequent outdoor walks, manage his finances and has no designated therapies or treatments meets the nursing home level of care required to be in the MI Choice waiver. The waiver agency representative explained that the Appellant was enrolled in the MI Choice waiver by a previous waiver agency. It is unknown whether the current waiver agency will seek to recoup MI Choice waiver program payments made to Appellant or his chore provider for the periods of time for which he drove and could perform his self-care. Medicaid cannot pay for MI Choice waiver services for an individual who does not meet the nursing home level of care.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly terminate his MI Choice waiver services or place his on a waiting list. A preponderance of the material and credible evidence established that the MI Choice waiver agency acted in accordance to the law and the Department policy, and its actions were proper when it terminated the Appellant's MI Choice program. Therefore, the Appellant failed to prove that the waiver agency's actions were not proper when it terminated the Appellant's MI Choice program services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice waiver agency properly terminated Appellant's MI Choice waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 02/23/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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.