

**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. 2010-41470 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 ██████████ 0. ██████████, daughter, appeared on behalf of the Appellant. ██████████ Care Management Supervisor for the ██████████, represented the Department's waiver agency. ██████████, Social worker, appeared as a witness for the ██████████

**ISSUE**

Did the Department's Waiver Agency, properly propose closure of the Appellant's MI-choice Wavier services due to lack of active Medicaid coverage?

**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 is a ██████████ participant in MI Choice Waiver services.
2. The Appellant was receiving residential services through the MI Choice Waiver program.
3. MI Choice Waiver services are covered for qualifying Medicaid beneficiaries. (Bridges Eligibility Manual (BEM) 106 July 1, 2010, page 1 of 6)
4. Medicaid eligibility determinations for waiver participants are made by the Department of Human Services. (Bridges Eligibility Manual (BEM) 106 July 1, 2010, page 2 of 6)

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5. The Department of Human Services informed the waiver agency that the Appellant would be in a divestment period from [REDACTED], [REDACTED], therefore, she was not financially eligible for Medicaid. (Hearing Summary and Exhibit 2)
6. On [REDACTED], the Appellant was notified her residential services would be terminated effective [REDACTED] due to the DHS notification of her Medicaid status. (Exhibit 1)
7. The Appellant requested a formal, administrative hearing on [REDACTED] (Request for Hearing)

**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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

This Appellant is claiming 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 Health Care Financing Administration 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)*

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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)).

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230. The MI Choice Waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

Clients must meet both the non-financial and financial eligibility criteria for waiver services. The waiver agent conducts the assessment to determine whether the client meets the non-financial eligibility criteria for services. However, DHS determines whether the client meets the financial eligibility criteria for the services after the waiver agency approves the client for the waiver. Although the MI Choice Waiver is not a Medicaid category, there are special financial eligibility rules for Medicaid recipients who have been approved for the waiver. The DHS local offices' primary responsibilities are doing initial asset assessments and determining MA eligibility for waiver patients. (Bridges Eligibility Manual (BEM) 106 July 1, 2010, page 1 of 6)

In this case, the records indicate DHS determined that the Appellant is not eligible for Medicaid because of a divestment period from [REDACTED] (Exhibit 2) The Appellant’s representative disagrees with the divestment period determination. However neither the waiver agency nor this ALJ has jurisdiction over Medicaid eligibility determinations. A hearing with the Department of Human Services is necessary to contest the divestment period. The process for filing a hearing request with the Department of Human Services was explained to the Appellant’s representative.

This ALJ has no authority to order the waiver agency to provide services to the Appellant when she has not met eligibility criteria. A client is not eligible to receive MI Choice Waiver services if DHS has determined that the client does not meet the eligibility criteria for waiver services, and the client is not an active Medicaid recipient. The waiver agency indicated that MI Choice Waiver services could be resumed once the Appellant becomes financially eligible for Medicaid, as approved by the Department of Human Services. (Hearing Summary)

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department’s Waiver Agency properly determined that Appellant was not eligible to receive MI Choice Waiver services.

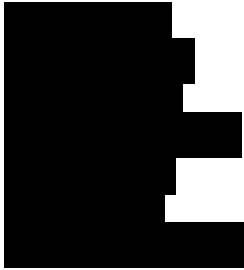
**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**.

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

cc:



Date Mailed: 9/24/2010

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearing 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 Hearing 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.