

**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. 2010-54286 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 ██████████. ██████████  
██████████, appeared on behalf of the Appellant. ██████████  
██████████, represented the Department's waiver agency.  
██████████, 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 being enrolled in both the MI Choice Waiver program and the Habilitation Supports 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 Appellant is a ██████████ participant in MI Choice Waiver services.
2. The Appellant was receiving residential services through the MI Choice Waiver Program.
3. During the ██████████, re-assessment the MI Choice Waiver Agency learned that the Appellant was also enrolled in the Habilitation Supports Waiver Program. (Community Service Director Testimony)
4. MI Choice Waiver Program eligibility policy specifically excludes persons enrolled in the Habilitation Supports Waiver Program. *Michigan Department of Community Health Contract Requirements for Supports Coordination*

*Service Performance Standards and MI Choice Program Operating Criteria, Attachment K, October 1, 2009, Page 9 of 75. (Exhibit 1, page 14)*

5. On [REDACTED], the Appellant was notified that his personal care and homemaking services through [REDACTED] would be terminated effective [REDACTED], because a participant can only be enrolled in one Medicaid Waiver Program. (Exhibit 1, page 4)
6. The Appellant requested a formal, administrative hearing on [REDACTED]. (Request for Hearing)
7. The Appellant's MI Choice Waiver program services have continued pending the outcome of this hearing. (Community Services Director Testimony)

### **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 [REDACTED], 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.

In this case, the MI Choice Waiver agency learned that the Appellant was also enrolled in the Habilitation and Supports Waiver Program during an [REDACTED], re-assessment. The MI Choice Waiver agency proposes a termination of the Appellant’s MI Choice Waiver services based on the policy prohibiting MI Choice Waiver program eligibility for persons enrolled in the Habilitation Supports Waiver Program. MI Choice Waiver program eligibility policy specifically excludes persons enrolled in the Habilitation Supports Waiver program. *Michigan Department of Community Health Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria, Attachment K, October 1, 2009, Page 9 of 75. (Exhibit 1, page 14)*

The Appellant’s Representative disagrees with the proposed termination and testified that the Appellant receives different services from each waiver program. She explained that the Appellant needs all of these services. Therefore, she states that it would not be in the Appellant’s best interest to choose one waiver program under which he could only receive some of the services.

Based on the information available at the time of the re-assessment, the MI Choice Waiver agency properly proposed a termination of the Appellant’s MI Choice Waiver program services. MI Choice Waiver Program eligibility policy is clear, a person enrolled in the Habilitation and Supports Waiver program is not eligible for the MI Choice Waiver program. The proposed termination from the MI Choice Waiver program is upheld.

The Appellant’s Representative stated that she believed the organization that enrolled the Appellant in the Habilitation and Supports Waiver program would be able to provide the services to the Appellant another way, which would not require enrollment in the Habilitation and Supports Waiver program. The MI Choice Waver Agency indicated that if they receive verification that the Appellant is no longer enrolled in the Habilitation and Supports Waiver program, he would be eligible to remain in the MI Choice Waiver program. If the Appellant is no longer enrolled in the Habilitation and Supports Waiver program, verification should be forwarded to the MI Choice Waver Agency to prevent the termination from being effectuated. If the Appellant is dis-enrolled from the

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Habilitation and Supports Waiver program after the termination from the MI Choice Waiver program occurs, he can re-apply for the MI Choice Waiver program.

**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 proposes closure of the Appellant's MI Choice Wavier services based on the information available at the time of the re-assessment.

**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: 12/1/2010

**\*\*\* 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.