

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

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IN THE MATTER OF:

Docket No. 2010-54289 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 ██████████. ██████████ appeared on her own behalf. ██████████, appeared on behalf of ██████████ ██████████, the Department's MI Choice program waiver agency (hereafter, Department). ██████████ and ██████████ appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate the Appellant's MI Choice Waiver services?

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 Medicaid beneficiary, and enrolled in the MI Choice Waiver program.
2. Through the MI Choice Waiver program, the Appellant received personal care, homemaking, and non-emergency transportation services from agency caregivers with ██████████.
3. On ██████████, ██████████ called the waiver agency stating they would no longer provide services to the Appellant. (Exhibit 1, page 27)
4. On ██████████, the Department issued an Advanced Action Notice to the Appellant that her waiver services would terminate week effective ██████████, because the agencies providing the in-home care have no more caregivers willing to provide services in the Appellant's home. (Exhibit 1,

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5. On [REDACTED], the waiver agency spoke to the Appellant, who agreed to having services resume at 4 hours 1 day per week with [REDACTED] while she continued sorting out the people she wanted to hire through the self determination program. (Exhibit 1, page 25)
6. The Appellant remains enrolled in the MI Choice Waiver program and is receiving 4 hours 2 days per week of [REDACTED] services from [REDACTED], but has not been able to add a self determination worker. (RN Testimony)
7. The Appellant's request for a formal, administrative hearing was received 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.

The 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 Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case [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)

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. 42 CFR 430.25(c)(2)

Home and community based services means services not otherwise furnished under the

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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)

[] 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)¹ 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)

It is undisputed that the Appellant has a need for personal care services.

The MI Choice waiver defines Service and Personal Care as follows:

“A range of assistance to enable program participants to accomplish tasks that they would normally do for themselves if they did not have a disability. This may take the form of hands-on assistance (actually performing a task for the person) or cueing to prompt the participant to perform a task. Personal care services may be provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care to the extent permitted by State law. Personal care under the waiver differs in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care services in the State plan. The differences between the waiver coverage and the State plan are that the provider qualification and the training requirements are more stringent for personal care as provided under the waiver than the requirements for this services under the State plan. Personal care includes assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. This service may include

¹ Services for the chronically mentally ill.

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assistance with preparation of meals, but does not include the cost of the meals themselves. When specified in the plan of care, this service may also include such housekeeping chores as bed making, dusting and vacuuming which are incidental to the service furnished, or which are essential to the health and welfare of the individual, rather than the individual's family. Personal care may be furnished outside the participant's home. The participant oversees and supervises individual providers on an ongoing basis when participating in SD options." (Emphasis supplied)

MI Choice Waiver, April 9, 2009;
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Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. See 42 CFR 440.230.

In the Appellant's case, she was receiving personal care, homemaking, and non-emergency transportation services from agency caregivers with [REDACTED] through the MI Choice Waiver program. The waiver agency had no option but to terminate the Appellant's service on [REDACTED], upon [REDACTED] telephone call reporting that they would no longer be able to provide services to the Appellant in her home. The Waiver Agency did not dis-enroll the Appellant from the MI Choice Waiver program. Rather, they worked on finding other caregivers to provide services to the Appellant. In effect, the Appellant's MI Choice Waiver program services were suspended until new caregivers could be found.

On [REDACTED], the Appellant consented to having services provided 4 hours 1 day per week by [REDACTED] while she continued sorting out the people she wanted to hire through the self determination program. The Appellant has not been able to hire a caregiver through the self determination program, however, her services from [REDACTED] have increased to 4 hours 2 days per week. The Appellant testified that this is a decrease in the in home services she was previously receiving and no longer includes the non-emergency transportation service. She stated the 8 hours per week is not enough.

While this ALJ is sympathetic to the Appellant's position, the Appellant consented to having [REDACTED] provide services only 4 hours per week. The waiver agency has already approved an increase to 8 hours. [REDACTED] does not provide transportation services, and the waiver agency has worked with the Appellant to try to add another caregiver through the self determination program. The Appellant can request that the waiver agency increase the hours authorized for the services [REDACTED] provides.

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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 until other caregivers could be found.

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:



Date Mailed: 12/10/2010

***** 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.