

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:

██████████,

Appellant

Docket No. 2011-125 EDW
2011-2479 EDW

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 her own behalf. ██████████

██████████ represented the Department's waiver agency. ██████████

██████████ appeared as witnesses for the ██████████.

ISSUE

Did the Department's Waiver agency properly propose termination of the Appellant's MI Choice Wavier services case because the only service she is receiving can be provided through other funding?

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 ██████████ participant in MI Choice Waiver services.
2. The Appellant was referred to the waiver agency in ██████████. (Exhibit 1, page 12)
3. The waiver agency has attempted to provide various waiver services to the Appellant since ██████████. (Exhibit 1, pages 17-19, 21, 26-28, 32-36, 39-41, 46-51, 54 and 64)
4. The Appellant has not been satisfied with services the waiver agency has attempted to provide nor the communication with the waiver agency. (Appellant Testimony)

██████████
Docket No. 2011-125 EDW and 2011-2479 EDW
Decision and Order

5. Currently, the Appellant is only receiving home delivered meals through the MI Choice Waiver program. (██████████ Testimony)
6. Home delivered meals could be provided to the Appellant by another funding source, as they were prior to her enrollment in the MI Choice Waiver program. (██████████ Testimony)
7. MI Choice Waiver program policy directs that other paid services available to the participant must be taken advantage of and MI Choice funding is the payment source of last resort. *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 43 of 75. (Exhibit 1, page 62)*
8. On ██████████, ██████████, and ██████████ the Appellant was notified that her MI Choice Waiver services, home delivered meals, chore, homemaker, personal care and private duty nursing services would be terminated. (Exhibit 1, pages 4-9, and 42-43)
9. The Appellant requested formal, administrative hearings on ██████████, and ██████████.

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 ██████████ (Department). Regional agencies, in this case the ██████████, 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

Docket No. 2011-125 EDW and 2011-2479 EDW
Decision and Order

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)).

In this case, the MI Choice Waiver agency is seeking to terminate the Appellant from the MI Choice Waiver program because the only service she is receiving through the waiver program is home delivered meals, which could be provided by a different funding source. MI Choice Waiver program policy directs that other paid services available to the participant must be taken advantage of and MI Choice funding is the payment source of last resort. *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 43 of 75. (Exhibit 1, page 62)*

The Appellant testified that she has not been satisfied with the waiver agency services provided by the waiver agency, and that there has been communication problems. The Appellant asserted that since the waiver agency (and workers directed to the Appellant’s home by the waiver agency to provide services) were unable to get to her home without trespassing, how could they have understood what services she even needed. The Appellant stated that the waiver agency did not actually provide services to her, just authorizations on paper that never materialized. However, based on her testimony that workers trespassed to get to her home, it is clear that some attempts to provide actual services were made.

While it is clear that there have been communication problems, it also appears that the Appellant wants services the Waiver agency is unable to provide. For example, the Appellant was not satisfied with the private duty nursing services provided through the MI Choice Waiver program because she needs a physician’s assistant, not an RN or LPN. However, MI Choice Waiver program policy for private duty nursing services only allows for services provided for licensed nurses. (Exhibit 1, page 37)

Under the above cited MI Choice Program policy regarding other paid services, the waiver agency properly proposes a termination of the Appellant’s MI Choice Waiver services. It was uncontested that the Appellant received home delivered meals prior to her enrollment in the MI Choice Waiver program. The waiver agency testified that the Appellant’s home delivered meals would go back to being covered under the OSA grant

**Docket No. 2011-125 EDW and 2011-2479 EDW
Decision and Order**

if she is terminated from the MI Choice Waiver program. Since this is the only service the Appellant is currently receiving through the MI Choice Waiver program, and it can be provided to her through another funding source, the termination must be upheld.

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 termination of the Appellant's MI Choice Wavier services because the only service she is receiving can be provided through other funding.

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:

A large black rectangular redaction box covering several lines of text in the distribution list.

Date Mailed: 12/29/2010

***** 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.