

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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. 2011-16988 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 ██████████. ██████████, brother, appeared behalf of the Appellant. ██████████, Appellant, appeared and testified. ██████████, friend of the family, appeared as a witness for the Appellant.

██████████ for ██████████ appeared on behalf of the Department of Community Health. ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health, (hereinafter Department). ██████████, and ██████████, appeared as witness for ██████████

ISSUE

Did the Waiver Agency properly propose disenrolling the Appellant from Self Determination for the MI Choice Waiver services program resulting in a termination of Fiscal Intermediary 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. The Appellant has been participating in Self Determination for the MI Choice Waiver program since ██████████. (Director of Quality Testimony)
3. Along with the Self Determination for the MI Choice Waiver program, the Appellant's received Fiscal Intermediary services. (Director of Quality

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Testimony)

4. The Appellant signed Employment Agreements for the caregivers he hired under Self Determination for the MI Choice waiver program. (Uncontested)
5. The Employment Agreements set out employee and employer responsibilities, which included understandings that the employee can not be paid in the Appellant's absence if he goes into a hospital or other medical care setting, that timesheets can not be submitted for any hours not worked and any falsification of timesheet documents may result in legal proceedings. (Exhibit 1, pages 8-10)
6. The Appellant was hospitalized from [REDACTED] through [REDACTED] and from [REDACTED] through [REDACTED]. (Exhibit 1, page 1)
7. The Appellant signed and submitted timesheets to the fiscal intermediary for services provided on [REDACTED], and [REDACTED]. (Exhibit 2, pages 5-6, and 9)
8. The Appellant was home for part of the day on [REDACTED]. (Brother Testimony)
9. The Appellant was expected to return home on [REDACTED] and his home required cleaning before he could return. The doctors found an infection with antibiotic resistant bacteria and decided that afternoon to keep the Appellant hospitalized. (Brother Testimony)
10. The Appellant has a standard schedule he uses for his caregivers and completing timesheets, rather than keeping track of when the times change. (Brother Testimony)
11. A waiver agency may rescind enrollment in Self Determination for participants either voluntarily or involuntarily. MDCH MI Choice Waiver Contract Requirements, Self Determination in Long Term Care, Attachment N, Page 18. (Exhibit 1, page 6)
12. On [REDACTED], the waiver agency sent the Appellant a letter notifying him that he would be disenrolled from Self Determination for failure to maintain the roles and responsibilities outlined in the self-determination long term care agreement. (Exhibit 1, page 2)
13. Disenrollment from Self Determination would end the Fiscal Intermediary services, but the other MI Choice waiver services would continue.

14. The Appellant's request for a formal, administrative hearing was received on ██████████. (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 is claiming eligibility for 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

Medicare Services 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)*

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))

The MDCH Self Determination in Long Term Care Contract Requirements Attachment N addresses rescinding enrollment in self determination:

6. The Waiver agent may rescind enrollment in the SD in LTC option for participants. This may be either a voluntary or an involuntary decision by the participant. The waiver agent must document all

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rescinded SD in LTC enrollments in the case record and include the reason for rescinding the enrollment and resolutions attempted prior to rescinding. The waiver agent sends this information to MDCH HCBSS. When the waiver agent rescinds the SD in LTC enrollment, the participant returns to traditional waiver services without an interruption in service delivery. The waiver agent provides adequate notice to each participant when it rescinds SD in LTC enrollment.

MDCH MI Choice Waiver Contract Requirements
Self Determination in Long Term Care,
Attachment N, Page 18
(Exhibit 1, page 2; Exhibit 2, page 2; Exhibit 3, page 2)

The above cited policy allows a waiver agency to rescind enrollment in Self Determination involuntarily. The waiver agency rescinded the Appellants' enrollment in Self Determination based on submitted timesheets showing hours worked when the Appellant was in the hospital and due to the difficulties in arranging services through Self Determination, such as the multitude of background checks on potential employees. (Exhibit 1, page 1)

It was uncontested that the Appellant signed employment agreements for each caregiver he hired. The Employment Agreements set out employee and employer responsibilities, which included understandings that there can be no payment for work performed in the Appellant's absence if he goes into a hospital or other medical care setting, that timesheets can not be submitted for any hours not worked, and any falsification of timesheet documents may result in legal proceedings. (Exhibit 1, pages 8-10)

The Appellant was hospitalized from [REDACTED] through [REDACTED] and from [REDACTED] through [REDACTED]. (Exhibit 1, page 1) However, the Appellant signed and submitted timesheets to the fiscal intermediary for services provided on [REDACTED], [REDACTED], and [REDACTED]. (Exhibit 2, pages 5-6, and 9) The waiver agency has agreed that hours could have been worked before the Appellant went into the hospital on [REDACTED]. (Clinical Manager Testimony) The Appellant's representative also provided an explanation of the hours worked on [REDACTED] which were due to anticipated discharge from the hospital and the need to sterilize the Appellant's home before he returned. The anticipated discharge did not occur and the Appellant's brother testified that they would pay out of pocket for the hours worked that day. The Appellant's brother also testified that the caregiver accidentally listed the wrong date in [REDACTED] when she completed the timesheet. He further asserted that if there was a problem with timesheets, they should have been returned to them to correct any errors, as had been done in the past. (Brother Testimony)

However, the Appellant's brother's testimony indicated a pattern of not submitting accurate timesheets, rather than a few isolated incidents or mistakes during a chaotic time. The Appellant's brother testified that they utilize a standard schedule for his caregivers and completing timesheets, rather than keeping track of when the times change. (Brother

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Testimony) Submitting accurate timesheets is a responsibility of both the employee and the Appellant.

The Appellant's brother brought up many other problems the Appellant has had since he began receiving services through this waiver agency. As noted during the hearing, this ALJ's review is limited to the current action, the proposed disenrollment from Self Determination for the MI Choice Waiver program. The Appellant can always file hearing requests contesting other issues as they occur.

The proposed disenrollment from Self Determination would not terminate the Appellant from the MI Choice Waiver program. Nor was this a determination that the Appellant no longer needs assistance in his home. The Fiscal Intermediary service for the services that had been provided under Self Determination would end, but all other MI Choice Waiver services would continue. The Appellant would return to traditional waiver services without an interruption in service delivery. The Clinical Manager explained that the Appellant could even keep the same caregivers if they hired on with an agency. (Clinical Manager Testimony) The above cited policy allows a waiver agency to rescind enrollment in Self Determination involuntarily. The Appellant was not fulfilling his responsibility to submit accurate timesheets for his employees. Accordingly, the waiver agency's proposed disenrollment from Self Determination for the MI Choice Waiver program is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the waiver agency within its authority to disenroll the Appellant from Self Determination for the MI Choice Waiver program, resulting in a termination of Fiscal Intermediary services.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:



Date Mailed: 6/23/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.