

**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. 2011-25346 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 ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████, husband, appeared as a witness for the Appellant. ██████████, represented the Department's waiver agency.

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 ██████ year-old participant in MI Choice Waiver services.
2. The Appellant was referred for MI Choice Waiver services in ██████████ and was presumed eligible for the program. (Hearing Summary and ██████████ Testimony)
3. The Appellant filed a Medicaid application with the Department of Human Services on ██████████. (Hearing Summary and ██████████ Testimony)
4. The Department of Human Services requested additional documentation to process the Medicaid application. (██████████ and Appellant Testimony)

5. The Medicaid application was denied on ██████████ because the additional information was not received. (Hearing Summary and ██████████ Testimony)
6. The Appellant and her husband have had difficulty with the Appellant's Department of Human Services worker in the past regarding documentation that was needed. (Appellant and husband Testimony)
7. The waiver agency has also attempted to assist the Appellant by contacting the Department of Human Services on her behalf. (██████████ Testimony)
8. MI Choice Waiver services are covered for qualifying Medicaid beneficiaries. (Bridges Eligibility Manual (BEM) 106 July 1, 2010, page 1 of 6)
9. 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)
10. On ██████████, the Appellant was notified her MI Choice Waiver services would be terminated effective ██████████ because the Department of Human Services denied her Medicaid application. (██████████ Testimony)
11. The Appellant requested a formal, administrative hearing on ██████████. (Request for Hearing)
12. Since the hearing request was timely filed, the Appellant's MI Choice Waiver services have continued pending the outcome of these hearing proceedings. (Hearing Summary and ██████████ Testimony)
13. The waiver agency also assisted the Appellant in filing a new Medicaid application with the Department of Human Services in ██████████ with a request for retroactive coverage to ██████████. This application was still pending as of the ██████████ hearing date. (Hearing Summary and ██████████ 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

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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 Region II Area Agency on Aging, 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)*).

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 Technical Director for the waiver agency testified that the Appellant's ██████████ Medicaid application was denied by the Department of Human

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Services because additional documentation requested from the Appellant was not received. Accordingly, the waiver agency issued the Advance Negative Action notice to the Appellant indicating her MI Choice Waiver services would terminate because her Medicaid application was denied. ██████████ Testimony)

The Appellant and her husband disagree with the termination. They testified that they have had difficulty with the Appellant's Department of Human Services worker several times in the past regarding needed documentation. Additionally, there is a current issue with the Appellant's food stamp case. The Appellant and her husband also explained that the Appellant has been ill, is blind in one eye and almost blind in the other eye. Her husband is her caregiver all day every day, and it can be overwhelming. They are also trying to get mental disability for the Appellant's husband and impaired son. (Appellant and husband Testimony)


Neither the waiver agency nor this ALJ has jurisdiction over Medicaid eligibility determinations or the Appellant's food stamp case. The Appellant can file hearing requests with the Department of Human Services to contest the issues with her Medicaid and food stamp cases.

This ALJ also has no authority to order the waiver agency to provide services to the Appellant when she has not met eligibility criteria. MI Choice Waiver services are only covered for qualifying Medicaid beneficiaries and the Appellant's Medicaid application was denied. Accordingly, the proposed termination of the Appellant's MI Choice Waiver program services must be upheld based on the information that was available to the waiver agency at the time the Advance Negative Action Notice was issued.

However, the waiver agency indicated that they assisted the Appellant in filing a new Medicaid application in ██████████. The Technical Director explained that they were waiting for the Department of Human Services to make a determination and the plan included backdating the Appellant's eligibility to the start of services. Accordingly, if the Department of Human Services has already found the Appellant eligible for Medicaid and the MI Choice waiver program, there would no longer be a need to terminate the Appellant's MI Choice Waiver services.

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 based on the information that was available to the waiver agency at the time the Advance Negative Action Notice was issued.


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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

cc:



Date Mailed: 6/8/2011

***** 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.