

**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. 2011-26323 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 ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████, appeared on behalf of ██████████. ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health, (waiver agency). ██████████ Social Work Care Manager, appeared as a witness for ██████████. The record was left open for additional documentation, which was received.

ISSUE

Did the Waiver Agency properly terminate the Appellant from the MI Choice Waiver for refusal of reassessment?

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 has been participating in the MI Choice Waiver services program.
2. Supports Coordinators are required to provide follow up and monitoring, including contacting the participant at least every 30 days unless otherwise specified, and to complete an in-person reassessment every 180 days to maintenance level participants. (*MDCH Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria Attachment K*, Pages 58-60)
3. The Appellant was due for a re-assessment on ██████████. (Exhibit 2, pages 4 and 9)

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4. The waiver agency made several attempts to schedule the home visit for the required re-assessment with the Appellant between [REDACTED], and [REDACTED]. (Exhibit 2, pages 3-5)
5. During this time the Appellant discussed other issues with her MI Choice Waiver services case, such as the Self Determination option and damage to a screen door, but indicated she was too busy to schedule the home visit. (Exhibit 2, pages 3-4)
6. On [REDACTED], the Appellant faxed in completed paperwork for Self Determination for the MI Choice Waiver program. (Exhibit 3, pages 1-10)
7. On [REDACTED], the waiver agency left the Appellant a detailed message stating that a reassessment must be completed for MI Choice Waiver services to continue as her consent and release of information expired [REDACTED]. The message advised that the Appellant's case would close if the re-assessment was not completed by the [REDACTED], due date. (Exhibit 1, page 4)
8. On [REDACTED], the waiver agency sent the Appellant an Adequate Action Notice of MI Choice Medicaid Waiver Disenrollment due to refusal of Reassessment indicating her MI Choice Waiver services would be terminated that same day. (Exhibit 2, pages 9-10)
9. On [REDACTED], the Appellant's request for a formal, administrative hearing was received.

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

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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 Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria Attachment K outlines the follow up/ monitoring and reassessment requirements:

XI. FOLLOW-UP AND MONITORING

Follow-up and monitoring include contact between SCs, the participant and/or service providers to ensure that providers deliver services as planned and to the satisfaction of the participant. SCs use follow-up and monitoring to evaluate the timeliness, appropriateness, and quality of services implemented under the POC. SCs monitor all services implemented on behalf of participants as a function of care planning and participant reassessment activities.

Requirements

1. SCs provide follow-up and monitoring to MI Choice participants. Waiver agents maintain local policy and procedures assuring that participants have a continuous opportunity to provide feedback about services, supports, interventions, and/or treatments.
2. SCs contact participants at least every 30 days, unless otherwise specified by the participant, to monitor the participant’s health and welfare, the provision of services, and the participant’s satisfaction with the current POC. SCs and participants can adjust services at this time to serve the participant better.
3. SCs contact the participant and/or service agency within fourteen (14) days of the agreed upon start date of service

implementation to verify that the provider delivers service in the manner arranged and to the satisfaction of the participant.

4. SCs and other waiver agent personnel document all follow-up and monitoring in the participant case record.
5. SCs record changes in services negotiated during follow-up and monitoring on behalf of participants in the participant POC.
6. SCs provide oral and/or written feedback to providers regarding services furnished according to the POC when the SCs receive complaints from participants.
7. When SCs attempt to arrange a service that cannot start within 30 days, they must contact the provider agency every 30 days until a provider can implement the service.

XII. REASSESSMENT

Reassessment provides a scheduled, periodic in-person reexamination of participant functioning for the purpose of identifying changes that may have occurred since the initial assessment or previous reassessment and to measure progress toward meeting specific goals outlined in the participant POC. Either an interdisciplinary SC team or an individual SC can perform reassessments. A team is not required to perform reassessments.

Requirements

1. SCs provide an in-person reassessment to active (see section XIII) program participants within 90 days of assessment or previous reassessment or when there are significant changes in the participant's health or functional status, or significant changes in the participant's network of allies (i.e. death of a primary caregiver).
2. SCs provide an in-person reassessment to maintenance level (see section XIII) program participants within 180 days of assessment or previous reassessment or when there are significant changes in the participant's health or functional status, or significant changes in the participant's network of allies (i.e. death of a primary caregiver).

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3. The reassessment is comprehensive and includes review of the same items evaluated during the initial assessment.
4. The case record must reflect documentation that the participant continually meets the NFLOC. The record must indicate the appropriate door through which the participant meets the NFLOC criteria based upon the current assessment.
5. The SC reviews reassessment findings with the participant. The SC and the participant update the POC, if necessary, based on mutually agreed service changes. The participant approves each service change. The SC send appropriate notice to the participant and/or obtains a clearly written signed statement from the participant that acknowledges the agreed upon change before the service changes can be put in place.
6. The SC includes reassessments in the participant case record.

MDCH Contract Requirements for Supports Coordination
Service Performance Standards and MI Choice Program
Operating Criteria Attachment K, Pages 58-60

In the Appellant's case, the reassessments were to be completed every 180 days, and a re-assessment was due ██████████. (Exhibit 2, pages 4 and 9) The case notes indicate the waiver agency made several attempts to schedule the home visit for the re-assessment with the Appellant between ██████████, and ██████████. The Appellant discussed other issues with the MI Choice Waiver program, such as damage to her screen door and the Self Determination option, but repeatedly indicated she was too busy to schedule the home visit for the re-assessment. On several occasions, the Appellant also indicated that the Social Work Care Manager should not call her back. (Exhibit 2, pages 3-4) On ██████████, the waiver agency left the Appellant a detailed message stating that a reassessment must be completed for MI Choice Waiver services to continue as her consent and release of information expired ██████████. The message advised that the Appellant's case would close if the re-assessment was not completed by the due date. (Exhibit 1, page 4)

The Appellant disagrees with the termination and testified she was willing to complete the re-assessment. She explained that she had physical therapy 3 times per week, and was in another program 4 days the week of ██████████. The Appellant testified that she had a hard time contacting the Social Work Care Manager by phone, but did send a 10 page fax to the waiver agency on ██████████. (Appellant Testimony)

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The documents the Appellant faxed to the waiver agency were to set up Self Determination for the MI Choice Waiver program. There is no evidence that anything was sent with these documents indicating when the Appellant was available to schedule the home visit for the required reassessment. (Exhibit 3, pages 1-10) Further, the Appellant's note of attempts to contact the Social Work Care Manager was dated [REDACTED], after the re-assessment was due.

While this ALJ understood the Appellant's testimony that she was busy during the time period at issue, this ALJ does not have authority to override or disregard the policy set forth by the Department. The waiver program requires monthly contacts and a re-assessment at least every 180 days for participants in maintenance status. The waiver agency made several attempts to schedule the home visit at the Appellant's convenience. The waiver agency left messages when they were able to. While the parties had some trouble reaching each other on some days, at least two telephone conversations occurred prior to the [REDACTED], due date. During the [REDACTED], and [REDACTED], calls the Appellant was not willing to schedule the visit. On [REDACTED], the Appellant indicated she was aware the re-assessment was due. (Exhibit 2, pages 4-5) On [REDACTED], the waiver agency left the Appellant a detailed message forewarning that her case would close if the re-assessment was not completed by the [REDACTED], due date. (Exhibit 1, page 4) The waiver agency made reasonable attempts to contact the Appellant and schedule the home visit for the required re-assessment. The Appellant was aware that the re-assessment was due, and failed to schedule a time to complete home visit, or even indicate when she would be available.

DECISION AND ORDER

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.

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:

[REDACTED]

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Date Mailed: 6/28/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.