

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-53325 EDW
Case No. 4726493

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's caregiver, also testified as a witness for Appellant. ██████████, Waiver Services Director, represented the Department of Community Health's Waiver Agency, the ██████████ Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, Care Manager, and ██████████, Care Manager, also testified as witnesses for the Waiver Agency. Following the hearing, the record was left open until ██████████, so that the parties could submit additional evidence.

ISSUE

Did the Waiver Agency properly deny Appellant's request to participate in the self-determination program of the MI Choice waiver program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old man and has been diagnosed with dyspnea, oliguria, cellulitis, arthritis, and obesity. (Exhibit 3, page 4; Exhibit 5, page 1).
2. AAA is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Appellant is enrolled in and has been receiving MI Choice waiver services through AAA. Specifically, Appellant had been receiving 28 hours of

personal care/homemaker services per week. (Exhibit 5, page 6; Testimony of ██████████).

4. From ██████████ to ██████████, Appellant participated in the self-determination program of the waiver program. (Testimony of ██████████).
5. AAA terminated Appellant's participation in the self-determination program because Appellant consistently went over budget. (Exhibit 4, page 10 of 15; Testimony of ██████████). Appellant did not appeal that termination. (Testimony of Appellant; Testimony of ██████████).
6. On ██████████, Appellant reapplied for participation in the self-determination program. (Exhibit 4, page 5 of 15; Testimony of ██████████).
7. On ██████████, AAA sent Appellant a notice that it denying his request. The reason given in the notice was that "[self-determination] was tried once without success." (Exhibit 1).
8. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 2).

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. 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 AAA, 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 C.F.R. § 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 C.F.R. § 430.25(c)(2))

Regarding self-determination, the Attachment to Medical Services Administration Policy Bulletin 11-27 (July 1, 2011) (hereinafter “MSA 11-27”) provides:

6.3. SELF-DETERMINATION

Self-Determination provides MI Choice participants the option to direct and control his/her own waiver services. Not all MI Choice participants choose to participate in self-determination. For those that do, the participant (or chosen representative(s)) has decision-making authority over workers who provide waiver services, including:

- Recruiting staff
- Referring staff to an agency for hiring (co-employer)
- Selecting staff from worker registry
- Hiring staff (common law employer)
- Verifying staff qualifications
- Obtaining criminal history and background investigation of staff
- Specifying additional service or staff qualifications based on the participant’s needs and preferences so long as such qualifications are consistent with the qualifications specified in the approved waiver application and the Minimum Operating Standards
- Specifying how services are provided and determining staff duties consistent with the service specifications in the approved waiver application and the Minimum Operating Standards

- Determining staff wages and benefits, subject to State limits (if any)
- Scheduling staff and the provision of services
- Orienting and instructing staff in duties
- Supervising staff
- Evaluating staff performance
- Verifying time worked by staff and approving timesheets
- Discharging staff (common law employer)
- Discharging staff from providing services (co-employer)
- Reallocating funds among services included in the participant's budget
- Identifying service providers and referring for provider enrollment
- Substituting service providers
- Authorizing payment for Goods and Services
- Reviewing and approving provider invoices for services rendered

Participant budget development for participants in self-direction occurs during the person-centered planning process and is intended to involve individuals the participant chooses. Planning for the participant's plan of service precedes the development of the participant's budget so that needs and preferences can be accounted for without arbitrarily restricting options and preferences due to cost considerations. An participant's budget is not authorized until both the participant and the waiver agency have agreed to the amount and its use. In the event that the participant is not satisfied with the authorized budget, he/she may reconvene the person-centered planning process. The waiver services of Fiscal Intermediary and Goods and Services are available specifically to self-determination participants to enhance their abilities to more fully exercise control over their services.

The participant may, at any time, modify or terminate the

arrangements that support self-determination. The most effective method for making changes is the person-centered planning process in which individuals chosen by the participant work with the participant and the supports coordinator to identify challenges and address problems that may be interfering with the success of a self-determination arrangement. The decision of a participant to terminate participation in self-determination does not alter the services and supports identified in the participant's plan of service. When the terminate participation, the waiver agency has an obligation to assume responsibility for assuring the provision of those services through its network of contracted provider agencies.

A waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. Prior to terminating a self-determination agreement (unless it is not feasible), the waiver agency informs the participant in writing of the issues that have led to the decision to terminate the arrangement and continues trying to resolve the issues that led to the termination.

(Attachment to MSA 11-27, pages 21-22)

The above policy identifies the grounds for when a waiver agency may terminate self-determination, *i.e.* "when problems arise due to the participant's inability to effectively direct services and supports" (Attachment to MSA 11-27, page 22), but it does not expressly address the denial of a request for self-determination. Nevertheless, the policy governing terminations should also govern the subsequent denial of a reapplication for self-determination. To hold otherwise would make the termination ineffectual as the client could simply reapply for self-determination program and the waiver agency would have to grant the request.

Here, as discussed above, the Waiver Agency previously terminated the self-determination program because Appellant consistently went over budget. (Exhibit 4, page 10 of 15; Testimony of ██████████). Appellant's testimony confirms that he was over budget on a number of occasions and he did not appeal the termination. (Testimony of Appellant; Testimony of ██████████).

Appellant now argues that it was not his fault that he went over budget because he only submitted his bills and invoices, even the ones he was not sure about, as instructed and those amounts were all paid for. (Testimony of Appellant). The Waiver Agency does not dispute that testimony and this Administrative Law Judge is sympathetic to Appellant's argument, especially since it appears the Waiver Agency did not discuss the budget problems with Appellant until the day it terminated the self-determination program. (Exhibit 4, page 10 of 15; Testimony of Appellant).

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However, as acknowledged by the documents he signed and his own testimony, Appellant knew that he had a budget, what that budget was, and that he had a responsibility to stay within his budget. (Exhibit 7, pages 1-4; Testimony of Appellant). Appellant did not fulfill his responsibilities under the self-determination agreement and he consistently went over budget. The Waiver Agency has always paid for the amounts over budget. (Testimony of [REDACTED]).

Given those payments and the problems that arose from Appellant's inability to effectively manage his budget and direct his services/supports, the Waiver Agency's decision to deny Appellant's request for reentry into the self-determination program must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's request to participate in the self-determination program of the MI Choice waiver program.

IT IS THEREFORE ORDERED that:

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

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 11/23/2011

***** 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.