

**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. 2011-27491 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. ██████████, caregiver, appeared as a witness for the Appellant. ██████████, Technical Manager for the ██████████, represented the Department's waiver agency. ██████████, Waiver Services Manager, appeared as a witness for the ██████████.

**ISSUE**

Did the Department's Waiver agency properly propose termination of the Appellant's MI Choice Wavier services case because she is over the income limit?

**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 has been receiving personal care services, non medical transportation, home delivered meals, and a PERS lifeline unit through the MI Choice Waiver program. (Exhibit 2, page 1)
3. MI Choice Waiver services are covered for qualifying Medicaid beneficiaries. (Bridges Eligibility Manual (BEM) 106 October 1, 2010, page 1 of 6)
4. Medicaid eligibility determinations for waiver participants are made by the Department of Human Services. (Bridges Eligibility Manual (BEM) 106

October 1, 2010, page 2 of 6)

5. The Appellant's income recently changed due to an increase in her pension. (Uncontested)
6. On ██████████, the waiver agency received an email from the Department of Human Services indicating they determined that due to the increase in the Appellant's pension, she is over the income limit for the MI Choice Waiver. (Exhibit 2, page 2)
7. On ██████████, the waiver agency issued an Advance Action Notice to the Appellant indicating her MI Choice Waiver Services would terminate.
8. The Appellant requested a formal, administrative hearing on ██████████  
██████████

### **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 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)*

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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. The Department of Human Services (DHS) determines whether the client meets the financial eligibility criteria for the services. 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 include determining MA eligibility for waiver patients. (Bridges Eligibility Manual (BEM) 106 October 1, 2010, page 1 of 6) The eligibility requirements for the MI Choice Waiver program include the requirement that income must be at or below 300% of the SSI Federal Benefit Rate. (Bridges Eligibility Manual (BEM), 106, MA Waiver for Elderly and Disabled, October 1, 2010, Page 2 of 6) In 2011, this is an income limit of \$2,022.

In this case, the MI Choice Waiver agency is seeking to terminate the Appellant from the MI Choice Waiver program because the Department of Human Services determined that the Appellant’s income exceeds the income limit for the program. The Appellant did not contest the increase in her pension, but indicated the termination is unfair. She explained that she receive Social Security and pension income. This year, only one had a cost of living increase, which has put her over the income limit by [REDACTED]. The Appellant provided documentation of her non-medical expenses. (Exhibit 3) She also provided documentation of medical expenses from Priority Medicare showing her patient responsibility. (Exhibit 4) The Appellant testified that she desperately needs the services she receives through the MI Choice Waiver program as she can not fix meals for herself or drive herself to appointments. The Appellant states this [REDACTED] will have a devastating effect on her life, and she can not afford the monthly Spend Down for her Medicaid. (Appellant Testimony)

This ALJ sympathizes with the Appellant’s circumstances. There was no dispute regarding the Appellant’s need for the MI Choice Waiver services. Unfortunately, this ALJ has no authority to order the waiver agency to provide services to the Appellant when she has not met eligibility criteria. A client is not eligible to receive MI Choice Waiver services if DHS has determined that the client does not meet the eligibility criteria, even if she is only over the income limit by [REDACTED]. Accordingly, the waiver agency’s proposed 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 she is over the income limit.

**IT IS THEREFORE ORDERED** that:

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

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

cc:



Date Mailed: 6/30/2011

**\*\*\* 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.