

**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. 2011-27502 EDW

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant's brother and attorney in fact, ██████████, appeared on the Appellant's behalf. ██████████, represented the Department's waiver agency. ██████████, appeared as witnesses for the waiver agency.

ISSUE

Did the waiver agency properly propose termination of the Appellant's MI Choice Waiver services?

FINDINGS OF FACT

The Administrative Law Judge, based on 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. (Exhibit 1, page 8)
2. On ██████████, the waiver agency completed an initial assessment to determine the Appellant's eligibility for the waiver program. (Exhibit 3, page 4)
3. On ██████████, the Appellant's waiver services began. She was receiving one hour of homemaking services per day (Testimony of ██████████)

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4. On ██████████, the waiver agency completed a quarterly assessment and determined that the Appellant was also enrolled in the Department of Human Services Adult Home Help Services (HHS) Program. (Exhibit 3, page 6)
5. On ██████████, the waiver agency issued an Advance Action Notice, advising that the Appellant that her waiver services would be terminated effective ██████████ because the Appellant is also enrolled in the HHS program. (Exhibit 1, page2)
6. 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 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 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)).

The MI Choice Waiver contract prohibits enrollment in both the Waiver Program and State Plan program, such as HHS, as follows:

Waiver agents coordinate with the DHS or other programs to ensure termination from the other program before participant enrollment in Mi Choice.

MI Choice Waiver Contract, FY 2011
Attachment K, page 25 of 76

In this case, the waiver agency is seeking to terminate the Appellant from the MI Choice Waiver program because at the time of the ██████████ assessment, she was also enrolled in, and receiving services from, the HHS program.

The Appellant's brother does not dispute that the Appellant was enrolled in both programs. Rather, he stated that he was not aware that the Appellant could not be enrolled in both, and the waiver agency never asked him about HHS. He further testified that the Appellant has since terminated her HHS, and he would like waiver services to continue.

The policy in this case is clear: the Appellant cannot be enrolled in both the MI Choice Waiver program and the HHS program. There is no dispute that she was enrolled in both in ██████████. Therefore, the waiver agency's termination was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the waiver agency's termination of the Appellant's services was proper.

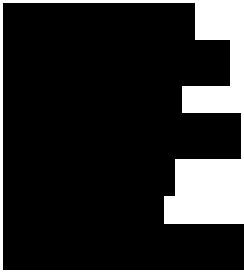
IT IS THEREFORE ORDERED that:

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

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:



Date Mailed: 5/27/2011

***** 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.