

**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. 2011-40739 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's daughter, represented her at hearing. The Appellant was not present.

██████████ was present on behalf of the MI Choice Waiver Agency for ██████████. ██████████ was present and testified on behalf of the Waiver Agency. ██████████, case coordinator, was present.

ISSUE

Did the Department's Waiver agency properly propose termination of the Appellant's MI Choice Wavier services case because the only service she is receiving can be provided through other funding?

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 enrolled in MI Choice Waiver services since ██████████.
3. The Appellant is potentially eligible for MI Choice Waiver services based upon a level of care determination that she passes through Door II of the eligibility criteria.
4. The Waiver Agency evaluated a need for services and authorized homemaking services and a medication box as MI Choice Waiver services.

5. At case re-assessment in ██████████, the Waiver Agency learned the medication box was not being used and had not been used for at least three (3) months.
6. The Appellant informed the R.N. at the assessment she preferred to have her husband or daughter remind her to take medications than make use of the medication box.
7. The medication box is the only waiver specific service authorized for the Appellant.
8. MI Choice Waiver program policy directs that other paid services available to the participant must be taken advantage of and MI Choice funding is the payment source of last resort. *Michigan Department of Community Health Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria, Attachment K, October 1, 2009, Page 43 of 75.*
9. The Appellant's needs can be met through the services offered by the Department of Human Services, Home Help Services (HHS) program. The HHS program offers both homemaking and medication reminders as paid services if needed.
10. On ██████████, the Appellant was notified that her MI Choice Waiver services would be terminated.
11. 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 function as the Department's administrative agency.

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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)).

In this case, the MI Choice Waiver agency is seeking to terminate the Appellant from the MI Choice Waiver program because the only waiver specific service she is receiving through the waiver program is a medication box intended to provide automated medication reminders. It is undisputed she is not using the box. MI Choice Waiver program policy directs that other paid services available to the participant must be taken advantage of and MI Choice funding is the payment source of last resort. *Michigan Department of Community Health Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria, Attachment K, October 1, 2009, Page 43 of 75.*

The Appellant’s daughter testified the box provided is broken and she just did not tell anyone it was broken. She explained it did not rotate properly, thus did not dispense medication properly so they stopped using it. She did not otherwise directly contest the agency testimony that the Appellant told them at her assessment she preferred to have her husband or daughter assist her with medication. The Appellant’s daughter further stated her mother suffered another stroke, has had frequent medication changes and she, as her mother’s provider, relies on the agency to help her perform the medication reminders properly by explaining what medication are supposed to be given her and in what amount

The agency provided testimony indicating the Appellant agreed to have services through the Department of Human Services Home Help Services (HHS) program and that her needs had been addressed through that program just prior to waiver enrollment. The homemaking services provided through the waiver could be funded through HHS, as well as medication reminders.

Under the above cited MI Choice Program policy regarding other paid services, the waiver agency properly proposes a termination of the Appellant's MI Choice Waiver services. It was uncontested that the Appellant received homemaking and medication reminders prior to her enrollment in the MI Choice Waiver program through DHS. The waiver agency testified that the Appellant's homemaking services and medication reminders would go back to being covered under the DHS programs if she is terminated from the MI Choice Waiver program. Since this is the only service the Appellant is currently receiving through the MI Choice Waiver program, and it can be provided to her through another funding source, the 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 Waiver services because the only waiver service she is receiving can be provided through other funding.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/28/2011

***** NOTICE *****

The State Office of Administrative Hearing and Rules 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 State Office of Administrative Hearing and Rules 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.