

**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. 2011-42023 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 ██████████. ██████████, Certified Nurse Assistant, appeared on the Appellant's behalf. ██████████, the Appellant, appeared and testified.

██████████, Special Projects Supervisor, 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 Waiver Agency. ██████████ MI Choice Regional Supervisor, was also present as an observer.

ISSUE

Did the Waiver Agency properly terminate the Appellant's MI Choice Wavier services case because he 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 transportation, Guardian medical monitoring, private duty nursing, homemaking, and personal care assistance through the MI Choice Waiver program. (Exhibit 1, page 16)
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 has not changed since he was enrolled in the MI Choice Waiver program. (Appellant Testimony)
6. On ██████████, a Department of Human Services administrative hearing Decision and Order determined that the Appellant is over the income limit for the MI Choice Waiver program. (Exhibit 1, pages 12-15)
7. On ██████████, the waiver agency issued an Adequate Action Notice to the Appellant indicating his MI Choice Waiver Services would terminate. (Exhibit 1, page 16)
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.

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 Area Agency on Aging 1-B, 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))

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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 Medicaid financial eligibility for waiver patients. *Bridges Eligibility Manual (BEM) 106*, October 1, 2010, page 1 of 6 and *MDCH Contract Requirements for Supports Coordination Service Performance Standards and MI Choice Program Operating Criteria Attachment K*, Page 23 of 76 (Exhibit 1, page 11).

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 of a ██████████, Department of Human Services administrative hearing Decision and Order, which determined, in part, that the Appellant's income exceeds the income limit for the MI Choice Waiver program. The Appellant did not contest that his monthly income is ██████████. Rather the Appellant credibly testified that his income has not changed, and was at this same amount when he was enrolled in the MI Choice Waiver program in ██████████. He explained that he could have made different choices to plan for how he was going to live, such as selling his home when the market was better, if he had known he would not remain in the MI Choice Waiver program. The Appellant stated that it is unfair to bump him off the MI Choice Waiver program due to excess income now because his income has not changed but his MS has progressed and his options are more limited.

This ALJ sympathizes with the Appellant's circumstances. There was no dispute regarding the Appellant's need for the MI Choice Waiver services. It is not clear how the Appellant was ever found financially eligible and enrolled in the MI Choice Waiver program. The Appellant's monthly income of ██████████ was not contested, and this exceeds the program income limit of ██████████. This ALJ has no authority to order the waiver agency to continue to provide services to the Appellant when he does not meet eligibility criteria. Accordingly, the waiver agency's 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 terminated the Appellant's MI Choice Wavier services because he is over the income limit.

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:



Date Mailed: 9/30/2011

***** 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.